NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1995, each agency shall begin the rulemaking process by first filing a Notice of Proposed Rulemaking, containing the preamble and the full text of the rules, with the Secretary of State's Office. The Secretary of State shall publish the notice along with the Preamble and the full text in the next available issue of the Arizona Administrative Register.

Under the Administrative Procedure Act (A.R.S. § 41-1001 *et seq.)*, an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for adoption, amendment, or repeal of any rule. A.R.S. §§ 41-1013 and 41-1022.

NOTICE OF PROPOSED RULEMAKING

TITLE 7. EDUCATION

CHAPTER 2. STATE BOARD OF EDUCATION

PREAMBLE

1. **Section Affected** — **Rulemaking Action**
   R7-2-808 — Amend

2. **The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
   Authorizing statute: A.R.S. § 15-203(A) and (B)

   Implementing statutes: A.R.S. §§ 15-802.01 and 15-705

3. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
   Name: Corinne L. Velasquez, Administrator

   Address: State Board of Education
   1535 West Jefferson, Room 418
   Phoenix, Arizona 85007

   Telephone: (602) 542-5057

   Fax: (602) 542-3046

4. **An explanation of the rule, including the agency's reasons for initiating the rule:**
   The amendment to R7-2-808 will prescribe procedures for pupils who are schooled in the home to participate in interscholastic athletic competition on behalf of a school in the attendance area where the student resides. These procedures are included in an existing rule, R7-2-808, Pupil Participation in Extracurricular Activities, to insure that policies are consistent between home-schooled students and students enrolled in a public school. This amendment was initiated in response to the requirements specified in A.R.S. § 15-802.01, which was passed during the 1995 legislative session.

5. **A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**
   Not applicable.

6. **The preliminary summary of the economic, small business, and consumer impact statement:**
   The requirement for the State Board of Education to prescribe rules for policies regarding students participating in extracurricular activities has been in effect for approximately 9 years. During the 1995 legislative session, A.R.S. § 15-802.01 was passed which required the State Board of Education to adopt rules prescribing procedures for the participation of children instructed at home in interscholastic athletic competition.

   The proposed amendment to R7-2-808 allows districts to charge fees to home-schooled students participating in interscholastic athletic competitions that are the same fees paid by students who are enrolled in the district. Since the participation of a home-schooled student does not affect the total number of members that make up a team, it is not anticipated that equipment costs will vary by allowing home-schooled students to participate. Preliminary data does indicate, however, that districts are reimbursed for transportation of students to an athletic event. This reimbursement is in the form of a weight that is added to the current funding formula. Since home-schooled students are not considered to be "enrolled" in the school district, they are therefore not counted in the formula and the district will not receive transportation reimbursement for these students. It is believed at this time, however, that the reimbursed amount is minimal.

7. **The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**

   Names: Corinne Velasquez

   Address: State Board of Education
   1535 West Jefferson, Room 418
   Phoenix, Arizona 85007

   Telephone: (602) 542-5057

   Facsimile: (602) 542-3046

8. **The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule, if no proceeding is scheduled, when, where, and how persons may request an oral proceeding on the proposed rule:**

   An oral proceeding on the proposed rulemaking is scheduled as follows:

   Date: March 25, 1996

   Time: 1 p.m.

   Location: State Board of Education
   1535 West Jefferson, Room 417
   Phoenix, Arizona 85007

   Written comments may be submitted on or before March 25, 1996, before 5 p.m. to the contact person listed above.

9. **Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**

   Not applicable.

10. **Incorporations by reference and their location in the rules:**

    None.

11. **The full text of the rules follows:**

TITLE 7. EDUCATION

CHAPTER 2. STATE BOARD OF EDUCATION

ARTICLE 8. COMPLIANCE

Section
R7-2-808. Pupil Participation in Extracurricular Activities

ARTICLE 8. COMPLIANCE

R7-2-808. Pupil Participation in Extracurricular Activities

A. The following standards are effective for district school students in grade 6, if part of a middle school, or in grades 7 through 12 and, home-school students in grades 7 through 12. Subject to meeting the eligibility requirements specified in this rule and provided that all students meet the requirements of this rule and other district eligibility requirements, a district-school student shall be allowed to participate in extracurricular activities and a home-school student shall be allowed to participate in interscholastic athletic competition. If a student reaches the age of 15 on or before September 1 of the school year, the student shall not be eligible to participate at the 7th and 8th grade levels. If a student reaches the age of 19 on or before September 1 of the school year, the student shall not be eligible to participate at the 9th through 12th grade levels.

B. ~~Definition~~ Definitions: ~~Extracurricular activities are:~~

1. Extracurricular activities are: All interscholastic activities which are of a competitive nature and involve more than 1 school where a championship, winner, or rating is determined; and all those endeavors of a continuous and ongoing nature for which no credit is earned in meeting graduation or promotional requirements and are organized, planned, or sponsored by the district consistent with district policy;

~~2. Activities which are an integral part of a credit class shall be excepted from the rule.~~

2. Interscholastic Athletic Competition is: All interscholastic sports activities which are part of a competitive nature, involve more than 1 school where a championship winner, or rating is determined, and involve physical exercise and established game rules;

3. Attendance Area means: The geographic attendance areas established by the district for attendance at a school.

C. Academic ~~Eligibility~~ eligibility requirements and ineligibility.

1. Eligibility. To be eligible to participate in extracurricular activities and interscholastic athletic competition, a student shall be required to:
   a. Earn a passing grade in each course or subject in which the student is ~~enrolled, and~~ instructed. Passing grade shall be determined on a cumulative basis, from the beginning of instruction to the recording of the final grade for the course.
   b. Maintain satisfactory progress toward advancement, promotion, or graduation.
2. Ineligibility. When it is determined that a student has failed to meet the requirements specified for eligibility, the student shall be declared ineligible to participate ~~in extracurricular activities~~ and shall remain ineligible until the requirements of eligibility are met.
   ~~a. The governing board shall establish the criteria for a passing grade and satisfactory progress toward promotion or graduation, taking into account the needs of children placed in special education pursuant to R7-2-401 et. seq. Passing grades shall be determined on a cumulative basis, from the beginning of instruction to the recording of a final grade for the course.~~

3. ~~Every 9 weeks or less,~~ At least every 9 weeks, or more frequently as determined by the governing board, district personnel shall ~~check~~ review the progress of students to determine their eligibility status. If a student is declared ineligible, the student shall remain ineligible, the student shall remain ineligible until ~~a subsequent check is performed~~ the next reporting and it is determined that the student meets the eligibility requirements specified in subsection (2)(a).
   a. The governing board shall establish the criteria for a passing grade and satisfactory progress toward promotion or graduation for district students, taking into account the needs of children placed in special education programs pursuant to R7-2-401 et. seq.
   b. The individual providing the primary instruction of a home-schooled student shall submit a notarized affidavit which provides:
      i. The affidavit is being submitted under penalty of perjury;
      ii. Whether the student is receiving a passing grade in each course or subject being taught;
      iii. Whether the student is maintaining satisfactory progress towards advancement, promotion, or graduation;
      iv. If a student has been enrolled in a district as a full-time student, the student shall not be eligible to participate in interscholastic athletic competition as a home-schooled student until an Affidavit of Intent to Home School has been filed with the County Superintendent and 30 days has elapsed since the filing of the affidavit.

D. Each governing board shall adopt a policy and implement a program pursuant to that policy to provide:
   1. Oral or written preliminary notice to all district students and their parents or guardian of pending ineligibility;
   2. Written notice to students and their parents or guardians when ineligibility has been determined;
   3. Educational support services to district students declared ineligible because of this rule, as well as those notified of pending ineligibility.
   4. Oral or written preliminary notice to all students and their parents or guardians of the time frames related to participation in extracurricular activities and interscholastic athletic competition. Written notice shall be made available within the school's administrative office to all students and their parents or guardians.
   5. Written notice made available to all students, their parents, or guardians at the district's administrative office regarding policies related to transportation, insurance, physical condition, fees, uniforms, calendars, practice requirements and schedules, and acceptance on a team. These policies are to be made available within the school's administrative office to all students and their parents or guardians.

E. All students shall register and pay fees established by the district for participation in interscholastic athletic competition or extracurricular activities and meet all qualifications, responsibilities, and standards of behavior and performance, including those related to demonstration of skill and proficiency, practice requirements, physical prerequisites, and acceptance onto the team, squad, or group.

F. District students may participate in interscholastic athletic competition and extracurricular activities in only the school in which the student is enrolled. Home-school students may participate in interscholastic athletic competition at a school only if the student actually resides within the boundaries of the attendance area of a school. Home-school students are not eligible for open enrollment pursuant to A.R.S. §§ 15-816 through 15-816.06.

NOTICE OF PROPOSED RULEMAKING

TITLE 11. MINES

CHAPTER 2. STATE MINE INSPECTOR
MINED LAND RECLAMATION

PREAMBLE

1.

Section Affected	Rulemaking Action
Article 1	New Article
R11-2-101	New Section
Article 2	New Article
R11-2-201	New Section
R11-2-202	New Section
R11-2-203	New Section
R11-2-204	New Section
R11-2-205	New Section
R11-2-206	New Section
R11-2-207	New Section
R11-2-208	New Section
R11-2-209	New Section
R11-2-210	New Section
R11-2-211	New Section
R11-2-212	New Section
R11-2-213	New Section
Article 3	New Article

R11-2-301	New Section
R11-2-302	New Section
R11-2-303	New Section
R11-2-304	New Section
New Article	New Article
R11-2-401	New Section
R11-2-402	New Section
Article 5	New Article
R11-2-501	New Section
R11-2-502	New Section
R11-2-503	New Section
R11-2-504	New Section
R11-2-505	New Section
R11-2-506	New Section
Article 6	New Article
R11-2-601	New Section
R11-2-602	New Section
R11-2-603	New Section
Article 7	New Article
R11-2-701	New Section
Article 8	New Article
R11-2-801	New Section
R11-2-802	New Section
R11-2-803	New Section
Article 9	New Article
R11-2-901	New Section
R11-2-902	New Section
R11-2-903	New Section
R11-2-904	New Section
R11-2-905	New Section
R11-2-906	New Section
R11-2-907	New Section
R11-2-908	New Section
R11-2-909	New Section
R11-2-910	New Section
R11-2-911	New Section
R11-2-912	New Section
R11-2-913	New Section
R11-2-914	New Section
R11-2-915	New Section

2. **The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

   Authorizing statute: A.R.S. § 27-904

   Implementing statutes:A.R.S. §§ 27-901 through 27-1026

3. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

   Name: Bill Moreo and Audrey Akhavan

   Address: State Mine Inspector
   1700 West Washington, Suite 400
   Phoenix, Arizona 85007

   Telephone: (602) 542-5971

   Fax: (602) 542-5335

4. **An explanation of the rule, including the agency's reasons for initiating the rule:**

   Articles 1 through 9 implement the Mined Land Reclamation statutes codified as A.R.S. §§ 27-901 through 27-1026. The proposed Mined Land Reclamation rules implement the program mandated by the Mined Land Reclamation Act and apply to exploration operations and metalliferous mining units disturbing more than 5 acres of private land.

   Many of the procedural and substantive details of the Mined Land Reclamation Program are included in the Arizona Mined Land Reclamation Act (SB 1365). The majority of the proposed rules serve to fill minor statutorial gaps and refine requirements contained in the Act.

   The agency's reason for initiating the rule stems from a legislative mandate (A.R.S. § 27-904) that the State Mine Inspector adopt rules consistent with the Mined Land Reclamation Act.

5. **A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable.

6. **The preliminary summary of the economic, small business, and consumer impact statement:**

The Arizona Mined Land Reclamation Act was passed in 1994 and is the enabling legislation for the Mined Land Reclamation rules. The Act names the State Mine Inspector as the agency to develop and adopt Mined Land Reclamation rules pursuant to the Act. The Division of Mined Land Reclamation established within the Office of the State Mine Inspector began the regulatory rule drafting process in March 1994. Outside parties were invited and did participate in the rule drafting, editing, and revising process.

Persons who will be most directly affected by, and bear the primary costs of, the new reclamation rules are the owners and operators of exploration projects and mining units on private land within the state of Arizona.

Those receiving the most direct and substantial economic benefit from the proposed rules will be equipment suppliers, vendors, consultants, engineers, and other providers of goods and services associated with reclamation planning and execution.

Financial institutions will realize a diverse and largely indirect variety of effects. Political subdivisions and taxing authorities, including state, county, municipal, school district, and other local government units, will realize a combination of costs and benefits associated with the new rules.

The proposed rules may affect utilities and power suppliers if mining companies reduce energy consumption to offset the higher expected costs of reclamation.

Private persons will be affected in various ways by the proposed rules. Employees of exploration and mining companies affected by the rules may be at risk of unemployment as a result of reduced company profitability associated with additional costs for reclamation. Shareholders of the 4 major companies involved in copper exploration and mining activities may suffer a loss in share value as a result of lower expected future capital appreciation and dividend flow.

Offsetting these costs, individuals and employees of businesses involved in the planning and execution of reclamation activities will benefit from increased opportunities for employment.

Downstream users of commodities produced by mining operations may be adversely affected as a result of a reduction in availability of those commodities. The users most directly affected include copper wire drawing facilities, brass mills, and foundries.

Finally, as the agency designated to administer the Mined Land Reclamation Program, the State Mine Inspector may be adversely affected should the program be underfunded after the first year. At this time, the Mined Land Reclamation Program is planned to be self-funded. Funds for administering the program's first year will come from the mining industry through a 1-time plan submittal fee based on a $3.00 per acre rate. There are currently no proposed funding mechanisms for subsequent years. After the start-up year, the agency will continue to incur costs for personnel, offices, travel, surveying, equipment and supplies, and professional services associated with the responsibilities of reclamation plan renewals, auditing and inspecting reclamation activities, and ensuring compliance with approved plans.

7. **The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**

Names: Bill Moreo and Audrey Akhavan

Address: State Mine Inspector's Office
1700 West Washington, Suite 400
Phoenix, Arizona 85007

Telephone: (602) 542-5971

Facsimile: (602) 542-5335

8. **The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule, if no proceeding is scheduled, when, where, and how persons may request an oral proceeding on the proposed rule:**

Date: March 26, 1996

Time: 8 a.m. to 4 p.m.

Location: State Capitol Executive Tower
Grand Canyon Room (Basement)
1700 West Washington
Phoenix, Arizona

Date: April 2, 1996

Time: 8 a.m. to 4 p.m.

Location: 400 West Congress
North Building, Room 222
Tucson, Arizona

9. **Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**
Not applicable.

10. **Incorporations by reference and their location in the rules:**
A.R.S. § 27-901 in R11-2-101
A.R.S. § 27-926(B) in R-11-2-204(A)
A.R.S. § 27-1024(B) in R11-2-213
A.R.S. § 27-951(A) in R11-2-301(A)
A.R.S. §§ 27-955, 27-927, and 27-929 in R11-2-302(A)
A.R.S. § 27-953(5) in R11-2-401
A.R.S. §§ 27-971(9)(a) through 27-971(9)(d) in R11-2-501(A)
A.R.S. § 27-975(A) in R11-2-601(B)
A.R.S. § 27-901 in R11-2-901(B)
A.R.S. §§ 27-992 and 27-993 in R11-2-902
A.R.S. § 27-992(A) in R11-2-903(A)
A.R.S. § 27-971(B)(11) in R11-2-903(B)
A.R.S. §§ 27-952 and 27-972 in R11-2-903(D)
A.R.S. § 27-992(B) in R11-2-903(E)
A.R.S. § 27-991(B) in R11-2-906(A)
A.R.S. § 27-996 in R11-2-906(4)(d)
A.R.S. Title 27, Chapter 5, Article 5 in R11-2-908
A.R.S. § 27-928 in R11-2-911(A)(3)
A.R.S. § 27-905 in R11-2-911(A)(4);
A.R.S Title 41, Chapter 6 in R11-2-912
A.R.S. Title 41, Chapter 6 in R11-2-914(B).

11. **The full text of the rules follows:**

TITLE 11. MINING

CHAPTER 2. STATE MINE INSPECTOR MINED LAND RECLAMATION

ARTICLE 1. DEFINITIONS

Section
R11-2-101. Definitions

ARTICLE 2. GENERAL REGULATORY PROVISIONS

Section
R11-2-201. Extension of Time for Submittal of Plan
R11-2-202. Site-specific Circumstances
R11-2-203. Supersedure by Federal Agency
R11-2-204. Extension of Time for Initiation of Reclamation
R11-2-205. Public Viewpoints at Open Pits
R11-2-206. Structures and Equipment-Public Safety
R11-2-207. Preservation of Documents
R11-2-208. Variance
R11-2-209. Unanticipated Conditions
R11-2-210. Cessation of Mining Activity
R11-2-211. Document Submittals
R11-2-212. Inspectors
R11-2-213. Civil Penalties

ARTICLE 3. EXPLORATION OPERATION RECLAMATION PLAN

Section
R11-2-301. Contents of the Exploration Operation Reclamation Plan
R11-2-302. Annual Renewal and Status Report
R11-2-303. Revegetation
R11-2-304. Compliance with Approved Exploration Operation Reclamation Plan

ARTICLE 4. EXPLORATION OPERATION STANDARDS

Section
R11-2-401. Trenches and Pits
R11-2-402. Disposal of Trash

ARTICLE 5. MINING UNIT RECLAMATION PLAN

Section
R11-2-501. Mining Unit Reclamation Plan Content
R11-2-502. Life of Approved Reclamation Plan
R11-2-503. Post-mining Land Use
R11-2-504. Annual Status Report
R11-2-505. Revegetation
R11-2-506. Compliance with Approved Mining Unit Reclamation Plan

ARTICLE 6. MINING UNIT STANDARDS

Section
R11-2-601. Public Safety
R11-2-602. Erosion Control and Topographic Contouring
R11-2-603. Roads

ARTICLE 7. REVEGETATION

Section
R11-2-701. Revegetation

ARTICLE 8. SOIL

Section
R11-2-801. Soil Criteria

ARTICLE 9. FINANCIAL ASSURANCE

Section

ARTICLE 1. DEFINITIONS

R11-2-101. Definitions

In addition to the definitions provided in A.R.S. § 27-901, the following definitions apply to this Chapter:

1. "Act" means the Arizona Mined Land Reclamation Act, enacted in 1994, A.R.S. § 27-901 et seq., as amended.
2. "Approved reclamation plan" means the owner's or operator's plan approved by the State Mine Inspector for reclaiming surface disturbances.
3. "Backfill" means earth, overburden, mine development rock, or imported material used to replace material removed during mining.
4. "Commodities in commerce" means a commodity that is mined for use or conversion into a salable or usable product.
5. "Completion" or "Completing" means the permanent discontinuance of mining activity of an exploration operation or mining unit without the intent to resume operation.
6. "Growth media" means a substance or material that promotes or supports vegetation.
7. "Innovative reclamation" means any reclamation method or series of methods that have not been proven successful for a comparable application in a similar climatic, topographic, or mineralized zone.
8. "Inspection" means a visual review of an exploration operation or mining unit to assure compliance with the Act, all rules adopted under the Act, or any condition of a reclamation plan approved by the State Mine Inspector under the Act.
9. "Institutional controls" means mechanisms that guide, manage, or exercise restraint or direction, including deed restrictions to protect public safety, fencing districts, and physical control of access.
10. "Mining activity" means any activity directly involved in mineral exploration, development, or production at or on an exploration operation or a mining unit.
11. "Operator" means any person who directs mining activity at an exploration operation or a mining unit.
12. "Owner" means any person who owns land with surface disturbances subject to the Act and this Chapter.
13. "Person" means an individual, corporation, governmental subdivision or agency, business trust, estate trust, partnership, association, or any other legal entity.
14. "Person of authority" means any person so designated by the owner or operator.
15. "Showing of good cause" means demonstrating a valid reason which prevents or limits the ability to act promptly or within required time limits.
16. "Subsidence" means the measurable lowering of a portion of the earth's surface or substrata.
17. "Substantial change" means a significant variation from the approved reclamation plan, including the following criteria:
    a. A new post-mining use for more than 25% of the land included in the approved reclamation plan,
    b. A change of 50% or more in the cost of reclamation measures, or
    c. A change adversely affecting public safety.
    d. The final determination of a substantial change shall be made by the State Mine Inspector as prescribed by the Act.

ARTICLE 2. GENERAL REGULATORY PROVISIONS

R11-2-201. Extension of Time for Submittal of Plan

The owner or operator may request an extension of time of up to 90 days to submit a reclamation plan for an existing exploration operation or an existing mining unit. The State Mine Inspector shall grant the extension on a showing of good cause. The extension of time to submit a reclamation plan shall be extended by the State Mine Inspector if the owner or operator justifies more time by a showing of good cause.

R11-2-202. Site-specific Circumstances

Technical and economic practicability and site-specific circumstances shall be considered by the State Mine Inspector in evaluating a reclamation plan.

R11-2-203. Supersedure by Federal Agency

The State Mine Inspector shall approve or deny an owner's or operator's request for a determination of whether an approved federal reclamation plan and a financial assurance mechanism for the federal land is consistent with the requirements of the Act or this Chapter within 30 days after receiving the approved federal reclamation plan and financial assurance mechanism. If the State Mine Inspector denies the request, the State Mine Inspector shall provide a written explanation of the reasons for denial.

R11-2-204. Extension of Time for Initiation of Reclamation

A. The owner or operator of an exploration operation or mining unit shall submit a written request for an extension of time to begin reclamation under A.R.S. § 27-926(B) at least 45 days before the time to begin reclamation under A.R.S. § 27-926. The written request shall include an explanation of the reasonable likelihood that the project or operation will resume.

B. The State Mine Inspector shall evaluate and either approve or deny the request within 30 days. If the State Mine Inspector fails to approve or deny the request in writing within 30 days after receiving the request, the request shall be considered approved. If the request is denied, the State Mine Inspector shall provide a written explanation of the reasons for denial.

R11-2-205. Public Viewpoints at Open Pits

A suitable public viewpoint at an open pit may be provided if it does not endanger public safety.

R11-2-206. Structures and Equipment-Public Safety

During reclamation operations, the owner or operator shall main-

tain structures, equipment, and other facilities in a safe and orderly manner and restrict access, as needed, to provide for public safety.

R11-2-207. Preservation of Documents
Beginning July 1, 1996, and until completion of all reclamation measures of the exploration operation or mining unit, an owner or operator shall retain a copy of the current approved reclamation plan, reclamation plans for areas for which reclamation has been completed, and annual status reports.

R11-2-208. Variance
A. An owner or operator shall request a variance to any requirement or standard under this Chapter or to any requirement or condition of an approved reclamation plan by submitting the following information, which shall be considered by the State Mine Inspector on a site-specific basis:
   1. The applicant's name and address;
   2. The date of the application;
   3. Identification by owner or operator and mine name, if any, of the exploration operation or mining unit for which the variance is sought;
   4. A descriptive location of the property on which the mining unit is located;
   5. Identification of the Section of this Chapter or requirement or condition of the approved reclamation plan from which the variance is sought;
   6. The justification for the variance, and
   7. Alternate methods or measures to be used.

B. The State Mine Inspector may require the applicant to provide more information, if necessary, to evaluate the variance request.

C. The State Mine Inspector shall respond to any variance request within 30 days. If the variance is granted, it shall be approved by the State Mine Inspector in writing.

R11-2-209. Unanticipated Conditions
A. An owner or operator may depart from an approved reclamation plan and not be in violation of the Act, this Chapter, or the approved reclamation plan if all the following apply:
   1. The unanticipated condition is encountered during operations or reclamation and requires an immediate change from the approved reclamation plan,
   2. The owner or operator notifies the State Mine Inspector not later than 5 days after determining reclamation cannot be conducted consistent with the approved reclamation plan,
   3. Any operational or reclamation activity conducted as a result of the unanticipated condition or conditions is consistent with the Act and this Chapter, and
   4. The owner or operator submits to the State Mine Inspector a notice of proposed change to the approved reclamation plan within 30 days after the initial notice submitted under R11-2-209(A)(2) or within a longer period specified by the State Mine Inspector if it is necessary to conduct engineering evaluations or other studies.

B. An unanticipated condition may include any physical or chemical condition that was not foreseen during preparation of the reclamation plan, such as instability of geological materials or discovery of toxic materials. Economic considerations shall not be the sole basis of an unanticipated condition.

R11-2-210. Cessation of Mining Activity
A. The cessation of mining will be considered to have occurred if any of the following occur:
   1. The person conducting the mining activity goes out of business and there is no succeeding legal entity,
   2. No further mining activity has been done from 1 annual status report to the next and no staffed office remains on site,
   3. The extension of the time to begin reclamation requested by the owner or operator and approved by the State Mine Inspector under R11-2-204 has expired and no other extension has been granted, or
   4. The State Mine Inspector determines and documents the mine as temporarily or permanently abandoned.

R11-2-211. Document Submittals
A. All owners and operators shall submit plans (1 original and 4 copies), substantial changes, variances, financial assurances, and other requests requiring the approval of the State Mine Inspector by certified mail (return receipt requested), express mail (with a receipt), or by hand delivery to the State Mine Inspector.

B. Under R11-2-211(A), all submittals shall be signed by a person of authority as designated by the owner or operator.

R11-2-212. Inspectors
The State Mine Inspector may appoint and assign inspectors, as prescribed in A.R.S. § 27-122, to perform the duties of the State Mine Inspector as authorized by the Act and this Chapter.

R11-2-213. Civil Penalties
All moneys paid as fines under A.R.S. § 27-1024(B) shall be to the State of Arizona General Fund.

ARTICLE 3. EXPLORATION OPERATION RECLAMATION PLAN

R11-2-301. Contents of the Exploration Operation Reclamation Plan
A. In addition to the content requirements found in A.R.S. § 27-951(A), the reclamation plan shall also include a sketch of the layout of the exploration project showing the locations, nature, and acreage of each disturbance. The applicant shall not be required to include specific survey coordinates, identifying exact topographic features, or exact geographic locations.

B. For existing exploration operations, the owner or operator shall include in the reclamation plan the estimated costs to perform the reclamation measures to determine financial assurance requirements under Chapter 5 of the Act and Article 9 of this Chapter.

R11-2-302. Annual Renewal and Status Report
A. The approved reclamation plan and financial assurance for exploration operations shall be renewed annually if required by A.R.S. § 27-955. The State Mine Inspector shall renew the approved reclamation plan if the modifications are consistent with the criteria of the Act and Article 4 of this Chapter. If the modifications constitute a substantial change, the State Mine Inspector shall renew the approved reclamation plan under the procedures of A.R.S. §§ 27-927 and 27-929 or deny the proposed substantial change.

B. Every owner or operator with an approved reclamation plan shall, within 60 days after the anniversary date of the approved reclamation plan, submit to the State Mine Inspector a status report for the preceding year. The status report shall:
   1. Provide the status of the exploration operation reclamation; and
   2. Identify the number of acres of surface disturbances, the number of acres reclaimed during the reporting year, and the number of acres of surface disturbances which have not yet been reclaimed.

R11-2-303. Revegetation

A. If revegetation is included in the proposed reclamation plan, the proposed reclamation plan shall contain a description of the:
   1. Season of revegetation;
   2. Species and amounts of seeds or flora per acre;
   3. Planting methods;
   4. Mulching techniques, if applicable;
   5. Irrigation methods, if appropriate; and
   6. Pest, disease, growth, and management measures, if any.

R11-2-304. Compliance with Approved Exploration Operation Reclamation Plan

The owner or operator of an exploration operation shall reclaim surface disturbances according to the provisions of the approved reclamation plan or as authorized by the Act or this Chapter.

ARTICLE 4. EXPLORATION OPERATION STANDARDS

R11-2-401. Trenches and Pits

Under A.R.S. § 27-953(5), access to those portions or places of open pits or trenches which border inhabited places frequented by the public shall be restricted by measures including fencing and the posting of warning signs.

R11-2-402. Disposal of Trash

Trash and other materials and structures incidental to exploration that pose a threat to public safety or create a public nuisance shall be removed or disposed of appropriately.

ARTICLE 5. MINING UNIT RECLAMATION PLAN

R11-2-501. Mining Unit Reclamation Plan Content

A. In addition to the proposed reclamation measures that are necessary to achieve the post-mining land use found under A.R.S. §§ 27-971(9)(a) through (d), the proposed mining unit reclamation plan shall also include procedures to aid in the development of vegetation consistent with the proposed post-mining land use objective for surface disturbances where the post-mining land use objective is grazing, wildlife habitat, or forestry. The type, density, and diversity of vegetation proposed in the reclamation plan shall depend on what is technically and economically practicable given site-specific characteristics such as climate and the availability and quality of soil.

B. The map or maps of the existing or proposed surface disturbances for mining units shall indicate the following:
   1. The existing, post-mining, and post-reclamation physical topography;
   2. Natural features, including surface water;
   3. Surface disturbances, pits, excavations, and building sites;
   4. Development rock piles, tailings dams and impoundments, heaps for leaching, spoil, soil or growth media storage piles, overburden stockpiles, and other piles of unconsolidated material;
   5. Solution ponds, settling ponds, and non-tailings impoundments;
   6. Roads, buildings, structures, and stationary equipment;
   7. Final post-mining land use objective for each portion of surface disturbance; and
   8. Boundaries of the mining unit.

R11-2-502. Life of Approved Reclamation Plan

Reclamation plans for mining units are approved for the life of the unit, but shall be amended if substantial changes are made.

R11-2-503. Post-mining Land Use

An owner or operator may list multiple post-mining land uses for a mining unit if the reclamation plan shows the post-mining land use for each area and each use satisfies the requirements of the Act and this Chapter.

R11-2-504. Annual Status Report

A. An owner or operator with an approved reclamation plan shall submit an annual status report for the preceding year to the State Mine Inspector within 60 days after the anniversary date of reclamation plan approval. The status report shall:
   1. Provide the status of the mining unit;
   2. Provide a map or an aerial photograph, or both, identifying the location of the surface disturbances and reclaimed areas and the year in which the surface disturbance and reclamation was completed. If no new surface disturbances have occurred during the previous year and no changes to the previous year's maps are necessary, then no new map is required. If no new map is required, the owner or operator shall say this in the annual status report; and
   3. Identify the number of acres of surface disturbances, the number of acres reclaimed during the reporting year, and the number of acres of surface disturbances which have not yet been reclaimed.

R11-2-505. Revegetation

A. If revegetation is included in the proposed reclamation plan, the proposed reclamation plan shall contain a description of the:
   1. Season of revegetation;
   2. Species and amounts of seeds or flora per acre;
   3. Planting methods;
   4. Mulching techniques, if applicable;
   5. Irrigation methods, if appropriate; and
   6. Pest, disease, growth, and management measures, if any.

R11-2-506. Compliance with Approved Mining Unit Reclamation Plan

The owner or operator of a mining unit shall reclaim surface disturbances according to the provisions of the approved reclamation plan or as authorized by the Act or this Chapter.

ARTICLE 6. MINING UNIT STANDARDS

R11-2-601. Public Safety

A. Reclamation activities at mining units subject to this Chapter shall be designed to reduce hazards to public safety to the extent technically and economically practicable by measures including:
   1. Disposal of trash, scrap metal, wood, or other debris incidental to mining activities that pose a threat to public safety or create a public nuisance; and
   2. Regrading slopes as prescribed under R11-2-602.

B. Where hazards to public safety cannot be adequately reduced through reclamation measures; where buildings, structures, and excavations remain as part of the approved post-mining land use; or where a mining unit has been exempted from reclamation under A.R.S. § 27-975(A), any hazard to public safety shall be reduced by carrying out measures which may include:
   1. Constructing berms, fences, or barriers to public access; and
   2. Posting warning signs in locations where public access is available.

R11-2-602. Erosion Control and Topographic Contouring

A. Mining units subject to this Chapter shall be reclaimed to a stable condition for erosion and seismic activity.

B. Grading and other topographic contouring methods shall be conducted, as necessary, to establish final land forms which are:
   1. Suitable for the post-mining land use objective in the approved reclamation plan.
   2. Stable under static and dynamic conditions as certified by a qualified engineer considering the following:
      a. Site-specific seismic conditions;
      b. Safety consistent with good engineering practices; and
      c. The hazard to public safety, if failure occurs.

C. Site-specific grading, revegetation, or other proposed erosion-control measures shall be conducted, as necessary, to address erosion so that permanent piles of mine development rock, overburden, and tailings shall not restrict surface drainages in a manner that contributes to excessive erosion or which compromises the stability of the reclaimed facility.

R11-2-603. Roads

A. Reclamation of a road, which is not included in the approved reclamation plan as part of the approved post-mining land use, shall begin once the road is no longer needed for operations, reclamation, or monitoring. The following reclamation measures shall be conducted, as necessary, to achieve the post-mining land use included in the approved reclamation plan:
   1. Vehicular traffic shall be controlled on the reclamation area to achieve the reclamation objectives;
   2. Surface drainage patterns shall be either restored to pre-mining conditions or new patterns established;
   3. All bridges and culverts shall be removed or stabilized, unless included as part of the approved post-mining land use;
   4. Culverts left in place as part of the approved post-mining land use shall be stabilized and protected from erosion with rock, concrete, or riprap; and
   5. Roadbeds shall be ripped, plowed, and scarified and revegetated, as necessary, to achieve the post-mining land use.

ARTICLE 7. REVEGETATION

R11-2-701. Revegetation

A. Revegetation of all surface disturbances shall be accomplished in a manner consistent with the approved reclamation plan and the proposed post-mining use of the land included in the approved reclamation plan.

B. Where surface disturbances result in compaction of the soil, ripping, disking, or other means shall be used in areas to be revegetated to reduce compaction and to establish a suitable root zone in preparation for planting.

C. Revegetation shall be conducted to establish plant species that will support the approved post-mining land use. The establishment of vegetation species, density, or diversity which is different than pre-existing conditions or on adjacent lands shall constitute successful reclamation if any of the following apply:
   1. The post-mining land use is different than the pre-mining land use or the use of adjacent lands;
   2. The site-specific nature of the surface disturbance, including soil conditions and topography, is such that the establishment of pre-existing or adjacent conditions is not technically or economically practicable; and
   3. The establishment of different species is preferable for control of erosion.

D. Planting shall be conducted during the most favorable period of the year for plant establishment.

E. Soil stabilizing practices or irrigation measures, or both, may be used when necessary to establish vegetation.

F. This Section only applies if vegetation or revegetation measures are included in the approved reclamation plan.

ARTICLE 8. SOIL

R11-2-801. Soil Criteria

A. When direct revegetation is expected to be successful, conservation of soil is not required.

B. If practicable and necessary for the establishment of the post-mining land use, available soil may be removed during the creation of a disturbance and stockpiled for use in future reclamation. A soil stockpile shall be marked with legible signs that identify the stockpile as "soil." A soil stockpile shall be stabilized, if necessary, to prevent excessive losses from erosion.

R11-2-802. Redistribution of Soil

Before redistribution of soil, the regraded land shall be treated, if necessary, to reduce the potential for slippage of the redistributed material or to enhance root penetration, or both. Soil and other materials shall be redistributed in a manner that prevents excess compaction and achieves a thickness consistent with the approved post-mining land use.

R11-2-803. Off-site Soil

Soil may be brought in from an off-site location and may include any growth media that will support vegetation, provide a stable growing surface, and will not create a hazard to public safety.

ARTICLE 9. FINANCIAL ASSURANCE

R11-2-901. Definitions

A. Unless expressly defined in the Act or this Chapter, the terms used in this Article have the same meanings as defined in Generally Accepted Accounting Principles.

B. In addition to the definitions provided in A.R.S. § 27-901, the following definitions apply to this Article:
   1. "Estimated future reclamation costs" means the current reclamation cost estimate for the owner or operator as approved by the State Mine Inspector under the Act and this Chapter.
   2. "ICPA" means Independent Certified Public Accountant.
   3. "Parent corporation" means a corporation which directly owns at least 50% of the voting stock of the corporation which is the owner or operator. Any latter corporation is considered a "subsidiary" of the parent corporation.
   4. "Substantial business relationship" means the extent of a business relationship which is necessary, under applicable state law, to make a guarantee contract (issued on the basis of that relationship) valid and enforceable. A "substantial business relationship" shall arise from a pattern of recent or ongoing business transactions, so that a currently existing business relationship between guarantor and the owner or operator is shown to the satisfaction of the State Mine Inspector.

R11-2-902. Applicability

A. The owner or operator of a new exploration operation or new mining unit that will result in a surface disturbance of more than 5 contiguous acres shall submit reclamation financial assurance under A.R.S. §§ 27-992 and 27-993 before beginning exploration or mining. Surface disturbances which have been reclaimed are not included within the cumulative 5 acres for reclamation financial assurance.

B. The owner or operator of an existing exploration operation or existing mining unit that results in a surface disturbance of more than 5 contiguous acres shall submit reclamation financial assurance under A.R.S. § 27-992(A).

R11-2-903. Amount of Financial Assurance

A. In estimating the cost of executing the reclamation plan, all activities in the reclamation plan shall be addressed, including, if applicable:
   1. Earth moving, regrading, and stabilization of surface disturbances included in the reclamation plan;
   2. Revegetation, preparation of seedbed, and planting;
   3. Demolition of buildings and other structures;
   4. For new exploration operations, removal or disposal of trash and other materials and structures incidental to exploration;
   5. Any ongoing or long-term activities which are required to maintain the effectiveness of reclamation or are necessary in place of reclamation, including periodic clean-out of sediment basins or maintenance of berms and fences which are used to prevent access to areas which pose a threat to public safety;
   6. Equipment mobilization and demobilization;
   7. Contractor profit; and
   8. Administrative overhead.

B. In addition to submitting the estimated costs to perform each of the proposed reclamation measures required under A.R.S. § 27-971(B)(11) or R11-2-301(B), the owner or operator of a mining unit or existing exploration operation shall submit to the State Mine Inspector:
   1. Documentation for the calculation of the estimated costs, and
   2. The source of the estimated costs.

C. The State Mine Inspector shall review the owner's or operator's estimate of the cost for reclamation and determine if the estimate is adequate to complete all required reclamation.

D. If the State Mine Inspector determines the estimated cost of executing the reclamation plan is not adequate to complete all required reclamation, the reclamation plan shall be considered incomplete under A.R.S. §§ 27-952 or 27-972.

E. In addition to the provisions of A.R.S. § 27-992(B), the State Mine Inspector may, in response to a written request by the owner or operator, reduce the amount of the required financial assurance to the costs of the owner or operator performing the reclamation measures based on the following:
   1. The financial strength of the company,
   2. The value of the assets of the company,
   3. Past reclamation performance by the company,
   4. Extent of proposed concurrent reclamation,
   5. Ease of carrying out the proposed reclamation plan, and
   6. Other conditions presented by the owner or operator.

F. The State Mine Inspector may increase or decrease the amount and duration of required financial assurance upon a showing by the owner or operator that the revised amount or duration is necessary or adequate to carry out the reclamation plan.

G. Any request for financial assurance reduction shall be answered by the State Mine Inspector within 30 days after receiving the request.

R11-2-904. Blanket Performance Bond

A blanket performance bond covering 2 or more exploration operations, mining units, or facilities may be submitted by an owner or operator instead of separate financial assurances for each separate operation, unit, or facility.

R11-2-905. Statewide Financial Assurance for Exploration Operations

The owner or operator of an exploration operation may provide statewide financial assurance for all operations conducted within the state of Arizona, as described in an approved reclamation plan.

R11-2-906. Financial Assurance Mechanisms

A. Beginning July 1, 1996, and as required by the Act and this Article, financial assuance shall be provided by 1 or more of the mechanisms listed in A.R.S. § 27-991(B).
   1. Surety bonds are an acceptable financial assurance mechanism. "Surety bond" means an indemnity agreement in a sum certain payable to the State Mine Inspector, executed by the owner or operator as principal and which is supported by the performance guarantee of a corporation licensed to do business as a surety in the state of Arizona.
   2. Certificates of deposit are an acceptable financial assurance mechanism. An owner or operator may provide the State Mine Inspector with a certificate of deposit which shows funds are available for reclamation of surface disturbances. The certificate of deposit shall name the State Mine Inspector as beneficiary. The financial institution issuing the certificate of deposit shall be an FDIC-insured entity whose operations are regulated by a federal or state agency. The owner or operator may redeem the certificate of deposit if alternative financial assurance that meets the requirements of the Act and this Chapter is substituted.
   3. Trust funds are an acceptable financial assurance mechanism.
      a. An owner or operator may satisfy the requirements of this Article by establishing a trust fund that meets the requirements of the Act and this Chapter. The trust fund shall name the State Mine Inspector as the primary beneficiary. The trustee shall be an entity which has the authority to act as trustee and whose trust operations are regulated and examined by a federal or state agency.
      b. An owner or operator may satisfy the requirements of the trust fund by establishing a trust fund with a pay-in period that meets the requirements of the Act and this Chapter and by submitting an original signed duplicate of the trust agreement to the State Mine Inspector.
      c. A copy of the trust agreement shall be placed in the facility's operating record.
      d. Payments into the trust fund shall be made annually, at a minimum, with subsequent payments made not later than 30 days after each annual anniversary of the date of the first payment by the owner or operator. Annual payments shall be in an amount adequate to pay all costs of reclamation for land disturbed in that annual period.
      e. If the property owner or operator establishes a trust fund after having used 1 or more alternate mechanisms specified in this Article, the initial payment into the trust fund shall be at least the amount that the fund would contain if the trust fund were established initially and annual payments made according to the specifications of this Section.
      f. The trust fund shall be funded in an amount at least equal to the then current estimate for reclamation costs or funded for part of the required amount of coverage and used in combination with other financial assurance mechanisms that provide the remaining required coverage.
   4. Letters of credit are an acceptable financial assurance mechanism.

a. An owner or operator may satisfy the requirements of this Article by obtaining an irrevocable stand-by letter of credit. The letter of credit shall be effective to receive financial assurance approval. The issuing institution shall be an entity which has the authority to issue letters of credit, is federally insured, and whose letter-of-credit operations are regulated and examined by a federal or state agency.

b. The letter of credit shall be irrevocable and issued for a period set to exceed 1 year by at least 90 days and in an amount at least equal to the then current estimate for reclamation costs. The letter of credit shall provide that the expiration date will automatically renew as approved by the State Mine Inspector for a period of at least 1 year, unless the issuing institution has canceled the letter of credit by sending notice of cancellation by certified mail to the owner or operator and to the State Mine Inspector 120 days in advance of cancellation. If the letter of credit is canceled by the issuing institution, the owner or operator shall obtain alternate financial assurance that meets the requirements of the Act and this Chapter within 120 days after the notice of cancellation.

c. The letter of credit shall indicate the conditions on which the State Mine Inspector may draw on the letter of credit.

d. The property owner or operator may, with notification to the State Mine Inspector, cancel the letter of credit if alternate financial assurance that meets the requirements of the Act and this Chapter is substituted or if the owner or operator is released from the requirements of this Article under A.R.S. § 27-996, and A.A.C. R11-2-210, R11-2-910, or R11-2-915.

5. Insurance is an acceptable financial assurance mechanism.

a. An owner or operator may show financial assurance for reclamation by obtaining insurance that meets the requirements of this Section. The insurance shall be effective before creating surface disturbances. At a minimum, the insurer shall be a non-captive insurance company licensed to transact the business of insurance by the Department of Insurance, or eligible to provide insurance as an excess or surplus lines insurer in the state of Arizona.

b. The reclamation insurance policy shall guarantee funds will be available to reclaim all disturbed lands and be available when the operation fails to comply with the approved reclamation plan. The policy shall also guarantee that, once reclamation begins, the insurer will be responsible for payment up to an amount equal to the face amount of the policy, under the direction of the State Mine Inspector to the party specified by the State Mine Inspector.

c. The insurance policy shall be issued for a face amount at least equal to the current cost estimate for reclamation.

d. A policyholder may, with notification to the State Mine Inspector, receive partial payment for reclaimed areas. Requests for payment will be granted by the insurer only if the remaining value of the policy is adequate to cover the remaining costs of reclamation. The policyholder shall notify the State Mine Inspector that payment has been received.

e. The insurance policy shall provide that the insurer may not cancel, terminate, or fail to renew the policy except for the failure to pay the premium. The automatic renewal of the policy shall, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may elect to cancel, terminate, or fail to renew the policy by sending notice by certified mail to the policyholder and to the State Mine Inspector 120 days in advance of the action. Cancellation, termination, or failure to renew may not occur and the policy will remain in full force and effect if, before the date of expiration, the premium due is paid.

f. The insured may cancel the insurance policy, with notification to the State Mine Inspector, if alternate financial assurance that meets the requirements of the Act and this Chapter is substituted.

6. Certificates of self-insurance are an acceptable financial assurance mechanism. An owner or operator may use self insurance in combination with a guarantee only if, to meet the requirement of the financial test under this Article, the financial statements of the owner or operator are not consolidated with the financial statements of the guarantor. (Substantial relationship.)

a. An owner or operator, and/or guarantor, may satisfy the requirements of this Article upon successful completion of the financial test specified in this Section. Successful completion is determined by meeting the criteria of R11-2-906(A)(6)(b) or R11-2-906(A)(6)(c) of this Section based on year-end financial statements for the latest completed fiscal year.

b. The owner or operator, and/or guarantor, shall have a tangible net worth of at least 10 times the current estimate for reclamation costs.

c. The owner or operator, and/or guarantor, shall have a tangible net worth of at least $10 million.

d. The owner or operator, and/or guarantor, shall submit to the State Mine Inspector a letter signed by the chief financial officer showing compliance with this subsection.

e. The owner or operator, and/or guarantor, shall either:

i. File financial statements annually with the U.S. Securities and Exchange Commission; or

ii. Report annually the firm's tangible net worth to Dun and Bradstreet, and Dun and Bradstreet shall have assigned the firm a financial-strength rating of 4A or 5A.

f. The firm's year-end financial statements, if independently audited, cannot include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.

g. The owner or operator, and/or guarantor, shall meet the financial test requirements of R11-2-906(A)(8).

h. The fiscal year-end financial statements of the owner or operator, and/or guarantor, shall be examined by an Independent Certified Public Accountant (ICPA) and included with the ICPA's report of the examination.

i. The firm's year-end financial statements cannot include an adverse opinion, a disclaimer of opinion, or a "going concern" qualification.

j. The owner or operator, and/or guarantor, shall submit to the State Mine Inspector a letter signed by the chief financial officer demonstrating compliance

with this subsection.

k. If the financial statements of the owner or operator, and/or guarantor, are not submitted annually to the U.S. Securities and Exchange Commission, the owner or operator, and/or guarantor, shall obtain a special report by an ICPA saying:
   i. The ICPA has compared the data (which the letter from the chief financial officer specifies) as having been derived from the latest year-end financial statements of the owner or operator, and/or guarantor, with the amounts in the financial statements; and
   ii. No matters caused the ICPA to believe the specified data should be adjusted.

l. If an owner or operator using the test to provide financial assurance finds the requirements of the financial test are no longer met, based on the year-end financial statements, the owner or operator shall obtain alternate financial assurance that meets the requirements of the Act and this Chapter within 120 days after the end of the year for which financial statements have been prepared.

m. The State Mine Inspector may require reports of financial condition, at any time, from the owner or operator, and/or guarantor. If the State Mine Inspector finds, on the basis of the reports or other information, the owner or operator, and/or guarantor, no longer meets the financial test requirements of R11-2-906(A)(6)(b) or (c), the owner or operator shall obtain alternate financial assurance that meets the requirements of the Act and this Chapter within 120 days after notification of the finding.

n. After the initial submission of the items specified in R11-2-906(A)(6)(b) or (c), the owner or operator shall send updated information to the State Mine Inspector within 90 days after the close of each succeeding fiscal year. This information shall consist of all items specified in R11-2-906(A)(6)(b) or (c).

7. Cash deposits with the State Treasurer are an acceptable financial assurance mechanism.
   a. An owner or operator may use a receipt of deposit with the State Treasurer for the estimated costs of reclamation. The receipt of deposit shall show funds are available for reclamation costs. The owner or operator shall complete a treasurer's financial warranty deposit under the State Mine Inspector's instructions. The deposit shall be in the name of the State Mine Inspector.
   b. The owner or operator may cancel the deposit with the State Treasurer, with notification to the State Mine Inspector, if alternate financial assurance that meets the requirements of the Act and this Chapter is substituted.

8. Corporate financial tests and guarantees are an acceptable financial assurance mechanism.
   a. An owner or operator may satisfy the requirements of this subsection upon successful completion of a financial test specified in R11-2-906(A)(8)(b). Successful completion is determined by meeting the criteria of either R11-2-(A)(8)(a)(i) or (ii):
   b. The owner or operator shall have:
      i. 2 of the following 3 ratios: a ratio of total liabilities to net worth of less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; or a ratio of current assets to current liabilities greater than 1.5;
      ii. Net working capital and tangible net worth each at least 6 times the current estimated future reclamation costs;
      iii. Tangible net worth of at least $10 million; an
      iv. Assets located in the United States amounting to at least 90% of total assets or at least 6 times the estimated future reclamation costs.
   c. The owner or operator shall have all of the following:
      i. A current rating for the most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's;
      ii. Tangible net worth at least 6 times the sum of the estimated future reclamation costs;
      iii. Tangible net worth of at least $10 million; and
      iv. Assets located in the United States amounting to at least 90% of total assets or at least 6 times the estimated future reclamation costs.
   d. To show successful completion of the corporate financial test, the owner or operator shall submit the following to the State Mine Inspector:
      i. A letter signed by the owner's or operator's chief financial officer demonstrating compliance with this subsection;
      ii. A copy of the ICPA's report on examination of the owner's or operator's financial statements for the latest completed fiscal year; and
      iii. A special report from the owner's or operator's ICPA to the owner or operator saying:
         (1) The ICPA has compared the data (which the letter from the chief financial officer specified) as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in the financial statements; and
         (2) No matters caused the ICPA to believe the specified data should be adjusted.
   e. After the initial submission of items specified in R11-2-906(A)(8)(b), the owner or operator shall send updated information to the State Mine Inspector within 90 days after the close of each succeeding fiscal year. This information shall consist of all items specified in R11-2-906(A)(8)(b).
   f. If the owner or operator no longer meets the requirements of R11-2-906(A)(8)(a) the owner or operator shall send notice of intent to establish alternative financial assurance to the State Mine Inspector. The notice shall be sent by certified mail within 90 days after the end of the fiscal year for which the year-end financial data show that the owner or operator no longer meets the requirements. The owner or operator shall provide the alternative financial assurance that meets the requirements of the Act and this Chapter within 120 days after the end of the fiscal year.
   g. The State Mine Inspector may, based on reasonable belief that the owner or operator may no longer meet the requirements of R11-2-906(A)(8)(a)(i) or (ii), require reports of financial condition, at any time, from the owner or operator, in addition to those specified in R11-2-906(A)(8)(b). If the State Mine Inspector makes a written finding, on the basis of the reports or other information, that the owner or oper-

ator no longer meets the requirements of R11-2-906(A)(8)(a)(i) or (ii), the owner or operator shall provide alternate financial assurance that meets the requirements of the Act and this Chapter within 120 days after notification of this written finding.

h. The State Mine Inspector may disallow use of this test on the basis of qualifications in the opinion expressed by the ICPA in the report on examination of the owner's or operator's financial statements. An adverse opinion or a disclaimer of opinion will be cause for disallowance. The State Mine Inspector will evaluate other qualifications on an individual basis. The owner or operator shall provide alternate financial assurance that meets the requirements of the Act and this Chapter within 120 days after notification of this disallowance.

i. The owner or operator is no longer required to submit the items specified in R11-2-906(A)(8)(b) when:
   i. An owner or operator substitutes alternate financial assurance that meets the requirements of the Act and this Chapter; or
   ii. The State Mine Inspector releases the owner or operator's financial assurance under the Act and this Chapter.

j. An owner or operator may meet the requirements of this subsection by obtaining a written guarantee. The guarantee shall be the direct or higher-tier parent corporation of the owner or operator, a group of legal entities which are controlled through stock ownership by a common parent corporation, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a substantial business relationship with the owner or operator. The guarantor shall meet the requirements for owners or operators in R11-2-906(A)(8)(a) through (h) and shall comply with the terms of the guarantee. The certified copy of the guarantee shall accompany the items sent to the State Mine Inspector as specified in R11-2-906(A)(8)(b). One of these items shall be the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter shall describe the value received in consideration of the guarantee. If the guarantor is a firm with a substantial business relationship with the owner or operator, this letter shall describe this substantial business relationship and the value received in consideration of the guarantee. The terms of the guarantee shall provide that:
   i. If the owner or operator fails to perform the reclamation covered by the guarantee under the approved reclamation plan, the guarantor will do so or establish a trust fund as specified in the Act and this Chapter in the name of the owner or operator.
   ii. The corporate guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the State Mine Inspector. Cancellation may not occur during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the State Mine Inspector, as evidenced by the return receipts.
   iii. If the owner or operator fails to provide alternate financial assurance that meets the requirements of the Act and this Chapter within 120 days after the owner or operator and the State Mine Inspector receive notice of cancellation of the corporate guarantee from the guarantor, the guarantor shall provide the alternate financial assurance in the name of the owner or operator.

9. Annuities are an acceptable financial assurance mechanism. An owner or operator may provide the State Mine Inspector an annuity as financial assurance for reclamation. The annuity shall name the State Mine Inspector as the beneficiary. The financial institution, if any, shall be licensed to do business in the state of Arizona. Any incremental or annual payment shall be in an amount adequate to pay all costs of reclamation for land disturbed in that incremental or annual period. The owner or operator may cancel the annuity only if alternate financial assurance that meets the requirements of the Act and this Chapter is provided.
10. Financial assurance mechanisms other than those listed in the statute may be acceptable, if approved by the State Mine Inspector.

B. The State Mine Inspector shall take final action on the financial assurance mechanism within 30 days after its receipt.

R11-2-907. Incremental Financial Assurance

If financial assurance is provided on an incremental basis as permitted under A.R.S. § 27-995, the amount shall be equal to or greater than the estimated cost of reclamation for surface disturbances created during that increment.

R11-2-908. Provider

Upon approval by the State Mine Inspector, under A.R.S. Title 27, Chapter 5, Article 5, financial assurances may be provided by the owner or operator, by any 3rd party, or by any combination of persons or entities.

R11-2-909. Financial Assurance of More than 1 Owner or Operator of a Single Unit

Whenever 2 or more persons or entities are named as owners or operators in a single exploration operation or mining unit, the owners or operators may limit the scope of their individual financial assurances so long as their financial assurances, in total, warrant performance of all conditions and requirements of the Act, this Chapter, and the approved reclamation plan.

R11-2-910. Application for Release of Financial Assurance

A. The financial assurance shall not be released until all conditions and requirements of the Act, this Chapter, and the approved reclamation plan have been satisfied.

B. Within 60 days after receiving a request for release of a financial assurance, the State Mine Inspector, or a designated agent, shall inspect the exploration operation or mining unit to determine whether the owner or operator has fulfilled the requirements of the approved reclamation plan and either:
   1. Approve the release of the financial assurance or portion thereof as requested; or
   2. Notify the operator in writing that the requested financial assurance will not be released, the reasons why, and the measures necessary to satisfy the requirements of the approved reclamation plan.

C. If a request to release is denied, the operator may appeal the decision.

D. The 60 days within which the State Mine Inspector, or a designated agent, shall respond to a request to release a financial assurance may be extended by mutual agreement if conditions prevent an inspection of the reclaimed land.

E. The State Mine Inspector shall release the transferor's financial assurance mechanism upon receipt of alternate financial

assurance that meets the requirements of the Act and this Chapter from the transferee.

R11-2-911. Forfeiture Criteria/Forfeiture of Financial Assurance

A. A financial assurance mechanism filed with the State Mine Inspector, any state agency, or any federal agency is subject to forfeiture if any of the following exist:
   1. An exploration operation or mining unit has been completed, abandoned, or temporarily closed for a period greater than allowed by the Act or this Chapter without initiating reclamation;
   2. An exploration operation or mining unit has been completed, abandoned, or temporarily closed for a period greater than allowed by the Act or this Chapter and the owner or operator stops or suspends any ongoing reclamation as determined by the State Mine Inspector;
   3. The operator stops conducting business in the state of Arizona and does not transfer the approved reclamation plan and financial assurance to a new operator under A.R.S. § 27-928.
   4. The operator stops conducting business due to insolvency, bankruptcy, receivership, or misconduct, under A.R.S. § 27-905;
   5. The operator fails to comply with the conditions of the financial assurance mechanism; or
   6. The owner or operator fails to reclaim the surface disturbances under the approved reclamation plan, the Act, or this Chapter.

B. Where the financial assurance has been filed with an agency of the federal government, the State Mine Inspector shall notify that agency and request forfeiture action to be taken.

R11-2-912. Notification of Forfeiture Action

At least 30 days before exercising forfeiture, the State Mine Inspector shall notify both the owner and operator by certified mail (return receipt requested), express mail (with a receipt), or hand delivery the financial assurance is subject to forfeiture and advise that owner and operator of the right to a hearing under A.R.S. Title 41, Chapter 6.

R11-2-913. Avoidance of Forfeiture

The State Mine Inspector shall advise both the owner and operator subject to R11-2-911 of the conditions under which forfeiture may be avoided. The conditions may include:
   1. An agreement by the owner and operator or another party to perform reclamation operations under a compliance schedule, determined by the State Mine Inspector, which meets the conditions of the Act, this Chapter, and the approved reclamation plan.
   2. A surety bond to complete the reclamation or a portion of the reclamation applicable to the financial assurance increment if the surety can show an ability to complete the reclamation under the Act, this Chapter, and the approved reclamation plan.

R11-2-914. Notice of Exercise of Forfeiture

A. The State Mine Inspector shall provide written notice by certified mail (return receipt requested) of any exercise of forfeiture of financial assurance to all principals and sureties.

B. The State Mine Inspector shall provide written notice of the right to a hearing as prescribed under A.R.S. Title 41, Chapter 6, to all principals and sureties.

R11-2-915. Term of Financial Assurance

Financial assurance shall be required until reclamation is considered complete by the State Mine Inspector. The State Mine Inspector shall promptly conduct an inspection when notified by the owner or operator that reclamation is complete. The full release of financial assurance shall be evidence the owner or operator has reclaimed as required by the Act, this Chapter, and the approved reclamation plan.

NOTICE OF PROPOSED RULEMAKING

TITLE 17. TRANSPORTATION

CHAPTER 4. DEPARTMENT OF TRANSPORTATION
MOTOR VEHICLE DIVISION

PREAMBLE

1. **Sections affected:** — **Rulemaking Action:**
   R17-4-449 — New Section

2. **The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
   Authorizing statute: A.R.S. § 28-202
   Implementing statute: A.R.S. § 28-1085.01

3. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
   Name: Randall X. Ramsey
   Address: Motor Vehicle Division Executive Hearing Office
   4747 North Seventh Avenue
   Phoenix, Arizona 85013-2401
   Telephone: (602) 255-7737
   Fax: (602) 241-1624

4. **An explanation of the rules, including the agency's reasons for initiating the rules:**
   The Motor Vehicle Division is promulgating the rule to allow 3rd parties to issue oversize and overdimensional vehicle permits. The rule sets forth the criteria for 3rd-party contractor authorization and 3rd-party issuer certification. The rule further defines the responsibilities for 3rd-party contractors and 3rd-party issuers. Once the rule is in place, a motor carrier needing an oversize or overdimensional permit will be able to obtain the permit from either the state or from a 3rd-party contractor.

5. **A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**
   Not applicable.

6. **The preliminary summary of the economic, small business, and consumer impact:**
   Haulers who have need for oversize and overdimensional permits will be able to save time by having the convenience of issuing their own permit or obtaining it from the state or a 3rd-party. It is not anticipated that the issuance of a permit will be profitable for 3rd-party contractors other than time savings. Small businesses will not be adversely affected by this rule. The Motor Vehicle Division will spend less time issuing permits but will incur time administering the 3rd-party contractor program; it is not known whether the adoption of the rule will result in a cost or a savings to the Division.

7. **The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**

   Name: Randall X. Ramsey

   Address: Motor Vehicle Division Executive Hearing Office
   4747 North Seventh Avenue
   Phoenix, Arizona 85013-2401

   Telephone: (602) 255-7737
   Fax: (602) 241-1624

8. **The time, place, and nature of the proceedings for the amendment of the rules:**
   Written comments will be accepted at the address listed above until 5 p.m. April 1, 1996. Public hearings to receive oral comments regarding this proposal will be held as follows:

   Date: March 27, 1996

   Time: 10 a.m.

   Location: Department of Transportation
   3565 South Broadmont, MVD Conference Room
   Tucson, Arizona

   Date: March 28, 1996

   Time: 1 p.m.

   Location: Department of Transportation
   206 South 17th Avenue, ADOT Auditorium
   Phoenix, Arizona

   Date: March 29, 1996

   Time: 11 a.m.

   Location: Department of Transportation
   211 West Aspen, City Hall Building
   Flagstaff, Arizona

   Individuals who wish to make oral comments by telephone may call (602) 255-7737 on March 26, 1996, from 1 p.m. to 4 p.m.

   The Department of Transportation follows Title II of the Americans with Disabilities Act. The Department of Transportation does not discriminate against persons with disabilities who wish to make oral or written comments on proposed rulemaking or otherwise participate in the public comment process. Individuals with disabilities who need a reasonable accommodation (including auxiliary aids or services to participate in the above scheduled hearings), or who require this information in an alternate form, may contact the Executive Hearing Office (602) 255-7737 as soon as possible so that the Department of Transportation will have sufficient time to respond.

   To request accommodation to participate in the public comment period or obtain this notice in large print, Braille, or on audiotape, contact Randall X. Ramsey at (602) 255-7737, P.O. Box 2100, Mail Drop 507M, Phoenix, Arizona 85013.

9. **Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**
   Not applicable.

10. Incorporations by reference and their location in the rules:

R17-4-449(F)(2) incorporates by reference the Department of Transportation Administrative Procedures, Chapter 6.02 Travel Authorization Procedure dated January 28, 1991.

11. The full text of the rules follows:

TITLE 17. TRANSPORTATION

CHAPTER 4. DEPARTMENT OF TRANSPORTATION
MOTOR VEHICLE DIVISION

ARTICLE 4. MOTOR CARRIERS

Section
R17-4-449. Third-Party Overdimensional and Overweight Vehicle Permit Contractors and Issuers

ARTICLE 4. MOTOR CARRIERS

R17-4-449. Third-Party Overdimensional and Overweight Vehicle Permit Contractors and Issuers

A. Definitions. In this Section, unless the context otherwise requires:
1. "Third-party contractor" means a business entity authorized by the Division to employ 3rd-party issuers.
2. "Director" means the Assistant Director for the Motor Vehicle Division of the Department of Transportation or the Assistant Director's designee.
3. "Division" means the Motor Vehicle Division of the Department of Transportation.
4. "Normal business hours" means open for the transaction of business from 8 a.m. until 5 p.m. each day from Monday through Friday except holidays.
5. "Permit" means a document issued by the Division that authorizes a person to transport overweight or overdimensional vehicles or cargo on state highways.
6. "Third-party issuer" means a person certified by the Director to issue permits.

B. 3rd-party contractor Requirements.
1. If a 3rd-party contractor is incorporated, the corporation shall be in good standing with the Corporation Commission and shall file an annual report.
2. A 3rd-party contractor and each partner, officer, and director, and an employee or individual who exercises operational control over the issuance of a permit shall not have had an authorization to do business revoked or suspended by the Director in the prior 3 years.
3. The 3rd-party contractor and each partner, officer, director, and employee and individual who has operational control over the issuance of a permits shall not have a final conviction for a felony within Arizona or for a final conviction outside Arizona that would be designated a felony if committed within Arizona. These individuals shall not have within 10 years before application for authorization as a 3rd-party contractor, a final conviction within Arizona for a misdemeanor set forth below or a final conviction outside Arizona that would be designated as 1 of the misdemeanors set forth below if committed within Arizona:
a. A.R.S. § 13-2703 False Swearing; classification;
b. A.R.S. § 13-2704 Unsworn falsification; classification;
c. A.R.S. § 13-2705 Perjury by inconsistent statements;
d. A.R.S. § 13-2605 Commercial bribery; classification; exception;
e. A.R.S. § 13-2407 Tampering with a public record; classification;
f. A.R.S. § 13-2405 Compounding; classification;
g. A.R.S. § 13-2402 Obstructing government operations; classification;
h. A.R.S. § 13-2316 Computer fraud; classification;
i. A.R.S. § 13-2202 Deceptive business practices; classification;
j. A.R.S. § 13-2109 Credit card transaction record theft; classification;
k. A.R.S. § 13-2108 Fraud by person authorized to provide goods or services; classification;
l. A.R.S. § 13-2105 Fraudulent use of a credit card; classification;
m. A.R.S. § 13- 2104 Forgery of a credit card; classification;
n. A.R.S. § 13-2103 Receipt of anything of value obtained by fraudulent use of a credit card; classification;
o. A.R.S. § 13-1807 Issuing a bad check; violation; classification; and
p. A.R.S. § 13-1802 Theft; classification.
4. A 3rd-party contractor shall employ at least 1 individual as a 3rd-party issuer.
5. A 3rd-party contractor, except a governmental entity, shall maintain an office within Arizona with normal business hours.
6. If a 3rd-party contractor is not a resident of Arizona, the 3rd-party contractor shall designate an agent or the Director upon whom service of process may be made in Arizona.
7. A 3rd-party contractor shall file and maintain a current mailing address with the Director.
8. A 3rd-party contractor shall not have had a license or operating authorization concerning overdimensional or overweight permits or the issuance of overdimensional or overweight permits revoked or suspended in Arizona or any other state.
9. A 3rd-party contractor shall be bonded as required by the Director. In determining the amount of the bond required, the Director shall consider the amount of permit fees and the value of unissued permits that will be present at any time at the 3rd-party contractor's place of business.
10. A 3rd-party contractor shall demonstrate financial responsibility adequate to protect liability that may arise from issuance of a permit. Adequate financial responsibility shall be demonstrated as follows:
a. Having commercial general liability insurance with a limit of not less than $2,000,000 for each occurrence. Umbrella/excess liability insurance may be used for coverage in excess of the first $1,000,000 if it provides the same coverage and has the same endorsements, exclusions, and conditions as the primary insurance. If the deductible provision of the 3rd-party contractor's liability insurance policy

exceeds $100,000, a principal of the 3rd-party contractor shall provide the Director with a sworn affidavit stating that the Department of Transportation and the state of Arizona are included in the 3rd-party contractor's self insured program to the same extent as would be provided by an additional insured endorsement on the liability insurance policy.

b. Naming the Department of Transportation and the state of Arizona as additional insureds on the liability insurance policy of a 3rd-party contractor other than a self-insured governmental entity.

c. Obtaining primary coverage from an insurance company licensed to do business in Arizona by the Department of Insurance.

d. Including in the liability insurance policy a provision that the Director be notified at least 30 days before policy cancellation, nonrenewal or change in provisions. Additionally, including a provision in the policy that the Director be notified if the insurance company becomes insolvent.

e. Providing the policy, together with all endorsements and exclusions, to the Director at time of application for authorization as a 3rd-party contractor.

11. The Division shall not authorize a business entity as 3rd-party contractor until the insurance policy by which the business entity demonstrates adequate financial responsibility is approved by the Director.

12. The Division shall place no limitations on an indemnification provision in the contract between the 3rd-party contractor and the Director.

13. For 3rd-party contractors that are governmental entities, the Division shall negotiate indemnification and insurance provisions and include the negotiated provisions in the Intergovernmental Agreement (IGA).

14. A 3rd-party contractor shall enter into a written contract with the Director before conducting business as a 3rd-party contractor. The contract shall include the following provisions:

a. An indemnification agreement,

b. The form and manner in which records are maintained,

c. Security provisions for protecting computer access and data received from the Division, and

d. The class of permits that may be issued.

15. The Envelope Permit Advisory Committee shall approve the form of the contract used by the Division and 3rd-party-contractors.

16. A business entity other than a governmental entity, shall have been in operation and in good standing with the Division for 3 years before applying for authorization as a 3rd-party contractor.

C. Third-party Issuer Certification Requirements.

1. A 3rd-party issuer shall be at least 18 years of age and employed by a 3rd-party contractor.

2. A 3rd-party issuer shall complete the Division's training program for 3rd-party issuers and comply with continuing education requirements of the Division.

3. A 3rd-party issuer shall not have a final conviction for a felony within Arizona or a final conviction outside Arizona that would be designated a felony if committed within Arizona.

4. In the 10 years before applying for certification, a 3rd-party issuer shall not have a final conviction within Arizona for a misdemeanor set forth in subsections (B)(3)(a) through (p) or a final conviction outside Arizona that would be designated as 1 of the misdemeanors set forth in subsections (B)(3)(a) through (p) if committed within Arizona.

5. A 3rd-party issuer shall comply with all statutes, rules, and contract provisions governing the issuance of overdimensional and overweight permits.

D. Application.

1. The Division shall provide the application for 3rd-party issuer certification and 3rd-party contractor authorization. The completed application shall be submitted to: Arizona Motor Vehicle Division, 1801 West Jefferson Street, Phoenix, Arizona 85007.

2. A 3rd-party contractor applicant and 3rd-party issuer applicant shall submit fingerprints to the Division and be subject to a random criminal background investigation with the costs borne by the applicant.

3. The Division shall obtain a criminal history check, which includes an inquiry to the criminal identification section of the Department of Public Safety for each 3rd-party contractor applicant and 3rd-party issuer applicant. Upon notification by the Department of Public Safety that the applicant has not been convicted of a violation that would prohibit the applicant from obtaining a 3rd-party contractor authorization or 3rd-party issuer certification, the Director shall conditionally issue a 3rd-party contractor authorization or 3rd-party issuer certification pending completion of the criminal history check if the applicant meets all other requirements of this rule and the contract.

E. Duties and Responsibilities of 3rd-party contractor.

1. A 3rd-party contractor shall retain records of all permits issued for 5 years after expiration of the permit, including:

a. Accounting records documenting receipt, deposit, and transmittal of fees;

b. Copies of permit applications; and

c. Copies of permits issued.

2. A 3rd-party contractor shall issue a permit only if the permit applicant meets all requirements of the rules and statutes governing overdimensional and overweight permits.

3. A 3rd-party contractor shall issue a Class C permit only after obtaining the approval of the Assistant State Engineer for Maintenance, Department of Transportation.

4. Upon notification by the Division, a 3rd-party contractor shall not issue a permit to an applicant whose permit privileges for that type of overdimensional or overweight permit are suspended or revoked.

5. A 3rd-party contractor shall make records available for and cooperate in an audit by the Director.

6. A 3rd-party contractor shall comply with all rules, statutes, and contract provisions governing the duties and responsibilities of the 3rd-party contractor.

7. A 3rd-party contractor shall collect permit fees and forward the collected fees to the Director by the close of the next business day.

8. If a 3rd-party contractor adds or changes a partner, officer, or director, or an other individual who may control the permit operation, and the new officer, director or other individual who may control the permit operation was not included in the application for authorization as a 3rd-party contractor, the 3rd-party contractor shall, within 30 days of the change, notify the Director in writing. The new partner, officer, director, or individual who may control the permit operation shall comply with this rule and the provisions of the contract between the 3rd-party contractor and the Director, and shall be subject to a random criminal background investigation with the cost borne by the 3rd-party contractor.

F. Audit.
1. To ensure compliance with authorization and certification requirements, the 3rd-party contractor shall be subject to random, on-site inspections of business records during normal business hours by the Division, state, county, and local law enforcement agencies.
2. A 3rd-party contractor, except a governmental entity located outside of Arizona, shall store and make business records available for audit at the 3rd-party contractor's place of business in Arizona. A governmental entity located outside of Arizona shall make business records of the governmental entity available at a designated location within Arizona or at the governmental entity's place of business outside Arizona as ordered by the Director. Audits shall be conducted at the 3rd-party contractor's expense. The 3rd-party contractor shall prepay audit expenses, including per diem and travel expenses, in accordance with Department of Transportation Administrative Procedures, Chapter 6.02 Travel Authorization Procedure dated January 28, 1991, which is incorporated into this rule by reference and on file at the Office of the Secretary of State and at the Department of Transportation Motor Vehicle Division Executive Hearing Office. This rule does not include later amendments or editions of the incorporated matter.
3. The Director shall revoke the authorization of a 3rd-party contractor that fails to cooperate in an audit.

G. Denial and Revocation; Appeal.
1. The Director shall deny an application for 3rd-party issuer certification or 3rd-party contractor authorization if the applicant fails to meet the requirements set forth in this rule.
2. The Director shall deny an application that contains a material omission or false statement and shall not accept another application from the denied applicant for 12 months from the date the original application is denied.
3. If the Director determines that a 3rd-party issuer or 3rd-party contractor no longer meets the requirements of this rule or the terms of the contract between the Division and the 3rd-party issuer or 3rd-party contractor, the Director shall revoke the 3rd-party issuer certification or 3rd-party contractor authorization.
4. If the Director determines that a 3rd-party issuer or 3rd-party contractor has violated the provisions of this rule or other rule or statute, the Director shall revoke the 3rd-party issuer certification and 3rd-party contractor authorization.
5. Before revoking a 3rd-party issuer certification and 3rd-party contractor authorization, the Director shall notify the 3rd-party issuer and 3rd-party contractor of immediate suspension and intent to revoke. The notice shall be sent by first-class mail, postage prepaid, to the address of the 3rd-party contractor on file with the Director.
6. The Director shall ensure that the notice informs the 3rd-party contractor that neither the contractor nor the 3rd-party issuer is authorized to issue permits and of the right to a hearing and the procedure for requesting a hearing.
7. Within 15 days after the notice of immediate suspension and intent to revoke is mailed to the 3rd-party contractor, the 3rd-party contractor may request a hearing by mailing or delivering a written request to: Executive Hearing Office, Motor Vehicle Division, 1801 West Jefferson, Phoenix, Arizona 85007.
8. The order of revocation becomes effective 25 days after the Director mails the notice of immediate suspension and intent to revoke unless the 3rd-party contractor submits a timely request for hearing.
9. The Division shall provide notice and conduct hearings, rehearings, and appeals in accordance with A.R.S. § 41-1061 et seq. and A.A.C. R17-4-901 et seq.
10. The Division shall not allow a former 3rd-party contractor or 3rd-party issuer to reapply for authorization or certification following revocation if the revocation is based on a fraudulent act or a knowing and intentional violation or attempt to violate the provisions of the contract, this rule or an other related rule or statute.
11. If an application for 3rd-party issuer certification or 3rd-party contractor authorization is denied, the Director shall send notice of the denial by 1st-class mail, postage prepaid, to the address shown on the application and shall inform the applicant of the right to a hearing and the procedure for requesting a hearing.

NOTICE OF PROPOSED RULEMAKING

Editor's Note: Two sets of rules appear in the following Notice of Proposed Rulemaking. The Department of Environmental Quality adopted rules on April 12, 1992, that were exempt from the requirements of A.R.S. Tile 41 and therefore not filed with the Office of the Secretary of State. Fees adopted in the exempt rulemaking process are currently in effect, however, so in the interest of public information we are printing both the rules that are on file with our Office and the exempt rules adopted in 1992. A detailed history of these rules is contained in the following preamble.

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 9. DEPARTMENT OF ENVIRONMENTAL QUALITY
WATER POLLUTION CONTROL

PREAMBLE

1. Sections Affected	Rulemaking Action
R18-9-123	Repeal
R18-9-123.1	Repeal

2. **The specific authority for the rulemaking, including both the authorizing statute(general) and the statutes the rules are implementing (specific):**

   Authorizing statute: A.R.S. § 49-104

   Implementing statute: A.R.S. § 49-203

3. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

   Name: Margaret L. McClelland or Martha L. Seaman

   Address: Department of Environmental Quality
   3033 North Central Avenue
   Phoenix, Arizona 85012

   Telephone: (602) 207-2222
   Fax: (602) 207-2251

4. **An explanation of the rule, including the agency's reasons for initiating the rule:**

   The purpose of this rulemaking is to repeal R18-9-123 which establishes aquifer protection permit fees, and R18-9-123.1 which repeals the provision for review of the bill. Simultaneously, the Department proposes, in a companion rulemaking, to adopt R18-14-101 through R18-14-106 and R18-14-201 through R18-14-206, Water Quality Permit and Compliance Fees, a more comprehensive water quality fee rulemaking. The companion rulemaking will contain all water quality permit and compliance fee rules, including those for Aquifer Protection Permits, making R18-9-123 and R18-9-123.1 no longer necessary.

   This rulemaking will repeal R18-9-123 and R18-9-123.1, the exempt rulemaking adopted by the Director and effective on April 12, 1992. This rulemaking was exempt from the requirements of A.R.S. Title 41 and was not published by the Office of the Secretary of State in the *Arizona Administrative Code*, but these are the fee rules which are currently effective for the aquifer protection permit program. The April 12, 1992, rules superseded the previous rulemaking, R18-9-123, which appears in the *Arizona Administrative Code* (Supp. 89-3). While the April 12, 1992, rulemaking effectively repealed the September 27, 1989, rule, the September 27, 1989, rulemaking continues to appear in the *Arizona Administrative Code* with no indication that it was repealed and superseded by a later, exempt rulemaking. This rulemaking also repeals the September 27, 1989, rulemaking.

5. **A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

   Not applicable.

6. **The preliminary summary of the economic, small business and consumer impact:**

   The proposed rulemaking repeals the fees for Aquifer Protection Permits. However, since the purpose of this repeal is to relocate the fees in a newly proposed Article (see Notice of Proposed Rulemaking for 18 A.A.C. 1. Permit and Compliance Fees) and will continue to be mandated, the Department does not anticipate any economic impact to any entity in the state, including small businesses and consumers.

7. **The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**

   Name: Margaret L. McClelland or Martha L. Seaman

   Address: Department of Environmental Quality
   3033 North Central Avenue
   Phoenix, Arizona 85012

   Telephone: (602) 207-2222

   Fax: (602 207-2251

9. **The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:**

   The Department shall hold oral proceedings to receive public comments in accordance with A.R.S. § 41-1023. The time, place, and location of the hearings are listed below:

   Date: March 25, 1996

   Time: 10 a.m.

   Location: Department of Environmental Quality
   3033 North Central Avenue
   Public Meeting Room
   Phoenix, Arizona 85012

Date: March 26, 1996

Time: 10 a.m.

Location: Flagstaff City Hall
Flagstaff City Council Chambers
211 West Aspen
Flagstaff, Arizona

Date: March 27, 1996

Time: 9:00 a.m.

Location: Mayor and City Council Chambers
255 West Alameda
Tucson, Arizona

The Department will accept oral or written comments which are received by 5 p.m. on April 2, 1996, or postmarked not later than that date.

The Department is committed to complying with the Americans with Disabilities Act. If any individual with a disability needs any type of accommodation, pleas contact the Department at least 72 hours before the hearing.

9. **Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**
Not applicable.

10. **Incorporations by reference and their location in the rules:**
None.

11. **The full text of the rules follows:**

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 9. DEPARTMENT OF ENVIRONMENTAL QUALITY
WATER POLLUTION CONTROL

ARTICLE 1. AQUIFER PROTECTION PERMITS

Section
~~R18-9-123. Aquifer Protection Permit Application Fees~~
~~R18-9-123.1 Review of Bill~~

ARTICLE 1. AQUIFER PROTECTION PERMITS

~~**R18-9-123. Aquifer Protection Permit Application Fees**~~

~~A. With each application for an individual Aquifer Protection Permit under R18-9-107, the applicant shall remit an initial fee according to the following schedule, except as otherwise provided in subsections (H), (I), and (J). The fee shall be payable to the state of Arizona, and shall be deposited in the state general fund, or if otherwise required by law, in the Water Quality Assurance Fund, or a fund established specifically for aquifer protection permit fees.~~

~~Categories~~	~~Initial Fee (In U.S. Dollars)~~	~~Maximum Fee~~
~~Wastewater Treatment Plants~~		
~~On-site Sewage Disposal Systems (less than 20,000 gpd)~~	~~$1500~~	~~$3450~~
~~Wastewater Treatment Plants Where Influent is Predominantly Sewage~~		
~~Lined Surface Impoundment (Evapotranspiration)~~	~~3300~~	~~6500~~
~~Discharge to Water of the U.S.~~	~~4800~~	~~7950~~
~~Subsurface Discharge~~	~~4150~~	~~7950~~
~~Landfills~~		
~~Municipal solid waste~~	~~4500~~	~~15750~~
~~Construction Debris~~	~~2850~~	~~6950~~
~~Other~~	~~5100~~	~~14600~~
~~Mines~~		
~~Tailings Piles or Ponds~~	~~7150~~	~~15400~~
~~Base Metal Leaching Operations with Chemical Process~~	~~4600~~	~~10550~~
~~Precious Metals Processing~~	~~4150~~	~~10200~~

~~In Situ Leaching~~	~~8930~~	~~14600~~
~~Other~~	~~5900~~	~~14400~~
~~Drywells~~	~~1350~~	~~4250~~
~~Industrial Wastewater Discharges~~		
~~Surface Impoundment~~	~~3650~~	~~9900~~
~~Discharge to Water of U.S.~~	~~5050~~	~~9700~~
~~Subsurface Discharge~~	~~4600~~	~~10250~~
~~Other Discharging Facilities~~	~~4850~~	~~15900~~

~~B. If the actual cost of processing the application identified in subsection (A) or (J) is less than the initial fee paid, the difference between the actual cost and the amount listed and paid shall be returned to the applicant with a final itemized bill within 30 days of the issuance or denial of the permit. If the actual cost of processing the application is greater than the corresponding amount listed, the department shall send the applicant a final itemized bill for the difference between the initial fee paid and the actual cost of processing the application, except that the final bill shall not exceed the applicable maximum fee in subsection (A) or (J). Such difference shall be paid in full before issuance of the permit.~~

~~C. The Department shall keep a record of the costs associated with denied applications. If there is an amount not covered by the initial fee and that is not paid, the Department shall add the product of the unpaid hours multiplied by the hourly rate in subsection (G) at the time of denial to the initial fee of a permit applied for under R18-9-107 by the same entity at a later date.~~

~~D. When determining actual cost under subsection (B), the Department shall use a flat hourly rate for all direct labor hours spent working on the permit. The hourly rate shall be based on an annual sum of the following aquifer protection permit program related costs divided by the director labor hours allocated for aquifer protection permit processing for the same year.~~

~~1. Salary and personnel benefit costs of aquifer protection permit program employees directly involved in processing permits.~~
~~2. Salary and personnel benefit costs of aquifer protection permit program employees indirectly involved in processing permits, such as supervisory and clerical personnel.~~
~~3. Department overhead and other operating expenses attributable to all aquifer protection permit program employees.~~
~~4. Per diem expenses.~~
~~5. Transportation costs.~~
~~6. Reproduction costs.~~
~~7. Laboratory analysis charges.~~
~~8. Public notice advertising and mailing costs.~~
~~9. Presiding officer expenses.~~
~~10. Court reporter expenses.~~
~~11. Facility rentals.~~
~~12. Other reasonable, direct, permit related expenses documented in writing by the Department.~~

~~E. Direct labor hours spent working on the permit shall consist of time spent by aquifer protection permit program technical staff or consultants on tasks specifically related to processing, issuance, or denial of a particular permit, including time at a facility inspecting the facility, time at a public hearing, or time at a preapplication conference held pursuant to R18-9-107(D).~~

~~F. Direct labor hours shall not include any of the following:~~

~~1. Training,~~
~~2. Travel to or from any facility or permit hearing,~~
~~3. Time by clerical or supervisory staff, unless the supervisory staff is filling in for a particular technical staff member in that person's absence.~~

~~G. From the effective date of this subsection, the flat hourly rate shall be $31.84 per hour. The Director shall annually publish the fee schedules under subsection (A) and (J) and the flat hourly rate under this subsection which will be applicable for the following 12 months. The fee schedules and hourly rate shall be based on the Department's costs for the previous full year.~~

~~H. For individual Aquifer Protection Permits which are consolidated pursuant to R18-9-122, and unless the applicant qualifies for the fee provision described in subsection (I), the applicant shall remit an initial fee which equals the sum of the greatest initial fee among the facilities, and the initial fee applicable to each additional facility reduced by 40%. The maximum fee to the applicant for consolidated permits shall be equal to the greatest maximum fee among the facilities, plus the maximum fee applicable to each additional facility reduced by 40%.~~

~~I. For purposes of subsection (A), an applicant applying for individual permits for 2 or more facilities of the same category of facilities that, in addition, are engaged in similar operations, and have discharges of similar chemical characteristics, and are geographically contiguous, is required to remit only the initial fee, and shall be charged no more than the maximum fee, applicable to a single such facility.~~

~~J. With an application that is a request for modification to an individual Aquifer Protection Permit or for a transfer of an individual Aquifer Protection Permit, the applicant shall remit an initial fee in the same manner as described in subsection (A), and according to the following schedule:~~

~~Categories~~	~~Initial Fee (In U.S. Dollars)~~	~~Maximum Fee~~
~~Permit modification as described in R18-9-121(C)(1) or (2) or that results from a major modification to a facility as described in A.R.S. § 49-201.8~~	~~1000~~	~~Same as allowed under subsection (A)~~
~~Permit modification that is described as a minor modification under R18-9-121(D)~~	~~0~~	~~100~~
~~Any other permit modification including those described in R18-9-121(D)~~	~~300~~	~~1000~~
~~Permit transfer~~	~~300~~	~~500~~

~~K. This rule is effective April 12, 1992. Persons who have submitted complete applications for permits, modifications, or transfers before the effective date of this rule shall be required to remit only the permit application fee that was in effect when the application was submitted. Persons who have submitted applications before the effective date of this rule shall be subject to an initial fee equal to the permit fee for the appropriate category at the time of submission. The final itemized bill for an application that is incomplete on the effective date of this rule shall include only direct labor hours incurred after the effective date of this rule~~

~~Fee~~	
~~Permit modification that constitutes a major modification as described in A.R.S. § 49-201.18~~	~~$ (Same as that under subsection (A))~~
~~Permit modification that is described as a minor modification under R18-9-12(D)~~	~~0~~
~~Permit modification that is neither a major modification nor a minor modification~~	~~200~~
~~Permit Transfer~~	~~200~~

ARTICLE 1. AQUIFER PROTECTION PERMITS

Section
~~R18-9-123. Fees~~

ARTICLE 1. AQUIFER PROTECTION PERMITS

~~R18-9-123. Fees~~

~~A. With each application for an individual Aquifer Protection Permit, the applicant shall remit a fee, payable to the state of Arizona, which is not refundable and which shall be deposited in the state general fund, according to the following schedule, except as otherwise provided in subsections (B), (C), and (D).~~

~~Categories~~	~~Fee (In U.S. dollars)~~
~~On-Site Sewage Disposal Systems (less than 20,000 gpd)~~	~~$1200~~
~~Wastewater Treatment Plants Where Influent is Predominantly Sewage~~	
~~Surface Impoundment~~	~~1400~~
~~Discharge to Water of the U.S.~~	~~1600~~
~~Subsurface Discharge~~	~~1400~~
~~Recharge and Underground Storage and Recovery without Effluent~~	~~2200~~
~~Recharge and Underground Storage and Recovery using Effluent~~	~~2800~~
~~Solid Waste Disposal Facility (Landfills)~~	~~2200~~
~~Construction Debris landfills~~	~~1200~~
~~Mines~~	
~~Surface Impoundments~~	~~1800~~
~~Tailings Piles or Ponds~~	~~2200~~
~~Base Metal Leaching Operations including Collection and Process Ponds~~	~~2300~~
~~In Situ~~	~~3400~~
~~Discharge to Water of U.S.~~	~~1900~~
~~Drywells~~	~~900~~
~~Industrial Wastewater Discharges~~	
~~Surface Impoundment~~	~~2200~~
~~Discharge to Water of U.S.~~	~~1700~~
~~Subsurface Discharge~~	~~1900~~
~~Other Discharging Facilities~~	~~1800~~

~~B. For individual Aquifer Protection Permits which are consolidated pursuant to R18-9-122, and unless the applicant qualifies for the fee provision described in subsection (C), the applicant shall remit a fee which equals the sum of the greatest fee among the facilities, and the fee applicable to each additional facility reduced by 40%.~~

~~C. An applicant applying for individual permits for 2 or more facilities of the same category of facilities that, in addition, are~~

~~engaged in similar operation, and have discharges of similar chemical characteristics, and are geographically contiguous is required to remit only that fee applicable to a single such facility.~~

~~D. With an application that is a request for modification to an individual Aquifer Protection Permit or for a transfer of an individual Aquifer Protection Permit, the applicant shall remit a fee in the same manner described in subsection (A), and according to the following schedule:~~

~~Fee~~	
~~Permit modification that constitutes a major modification as described in A.R.S. § 49-201.18~~	~~$ (Same as that under subsection (A))~~
~~Permit modification that is described as a minor modification under R18-9-12(D)~~	~~0~~
~~Permit modification that is neither a major modification nor a minor modification~~	~~200~~
~~Permit transfer~~	~~200~~

NOTICE OF PROPOSED RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 14. DEPARTMENT OF ENVIRONMENTAL QUALITY
PERMIT AND COMPLIANCE FEES

PREAMBLE

1. **Sections Affected**

Sections Affected	Rulemaking Action
Article 1	New Article
R18-14-101	New Section
R18-14-102	New Section
R18-14-103	New Section
R18-14-104	New Section
R18-14-105	New Section
R18-14-106	New Section
Article 2	New Article
R18-14-201	New Section
R18-14-202	New Section
R18-14-203	New Section
R18-14-204	New Section
R18-14-205	New Section
R18-14-206	New Section

2. **The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

   Authorizing statutes: A.R.S. §§ 49-104(C), 49-203(A)(7), 49-209(A), 49-241(G), 49-241.02, 49-242, 49-332(A), 49-353(A)(2)(b), and 49-362(A)(7).

   Implementing statutes: A.R.S. §§ 49-104, 49-203, 49-241, 49-242, 49-332, 49-353, and 49-362.

3. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

   Name: Margaret L. McClelland or Martha L. Seaman

   Address: Department of Environmental Quality
   3033 North Central Avenue
   Phoenix, Arizona 85012-2809

   Telephone: (602) 207-2222

   Fax: (602) 207-2251

4. **An explanation of the rule, including the agency's reasons for initiating the rule:**

   The purpose of this proposed rulemaking is to establish comprehensive fees for the water and wastewater regulatory programs administered by the Department of Environmental Quality (hereafter "ADEQ"). These fees will be used to support the construc-

tion review, permitting, and compliance services performed by ADEQ personnel and ensure that those services are carried out in a timely, professional manner.

I. Background for These Proposed Rules

ADEQ is responsible for conducting construction reviews, issuing permits, and routinely inspecting over 8,000 water and wastewater facilities throughout the state. Historically, the funding for these activities has come from either the general fund or the Water Quality Assurance Revolving Fund (WQARF).

In its recent sessions, the Arizona Legislature has enacted numerous user fee requirements for the professional services of ADEQ. The legislative intent of these fees is to transfer the cost of these environmental services away from the general taxpayers to those individuals, municipalities, companies and corporations which require environmental permits and plan reviews in order to construct or operate their facilities.

State law currently authorizes ADEQ to assess and collect fees for a variety of services which are designed to control or eliminate potential threats to public health and the environment. To date, the only fees which ADEQ has established for its water programs are those associated with the Aquifer Protection Program (hereafter "APP") (see A.A.C. R18-9-123, effective April 12, 1992).

This proposed rulemaking implements statutorily mandated requirements for assessing and collecting fees for drinking water and surface water activities, as well as revises the existing APP fees. The proposed rules also consolidate all water quality fee rules into 1 Chapter, making it much easier for the regulated community to find the fee rules to which they are subject.

In order to ensure that the proposed fees are fair, equitable, and reflect the actual cost of delivering its professional services, ADEQ contracted with Arthur Andersen and Company, an independent contractor, to study ADEQ's permitting, plan review, and compliance processes. The study determined the costs ADEQ incurs in providing these services. The study, which projected out these costs through Fiscal Year 2001, was completed in April 1995, and is available for public review. Persons interested in reviewing the study may do so by contacting Patricia Nowack, in the Budget Unit of the Office of Fiscal Services. The assumptions and conclusions of this study form the basis for today's proposal. However, these basic assumptions are also discussed below.

A Notice of Docket Opening for this proposal appeared in 1 A.A.R. 2339, November 13, 1995. ADEQ is also proposing a companion rule which repeals R18-9-123 and R18-9-123.1. The provisions of these rules will be contained within this rulemaking.

B. Specific Section-by-Section Explanation of This Proposal

The Section-by-Section explanation of these proposed rules is organized as follows:

1. Fee Services
2. Hourly Rates
3. Initial Fees
4. Maximum Fees
5. Fee Assessment and Collection
6. Appeal Process

1. Fee Services

Today's proposal covers fees for both drinking water and wastewater services provided to the public. State law requires persons, planning to construct or modify drinking water treatment plants, water storage facilities and distribution lines, to submit plans, drawings and specifications for these projects for ADEQ review and approval prior to initiating construction.

The ADEQ review ensures that project designs are consistent with state standards and ensure the integrity and safety of the project. A facility which is used to collect, treat and dispose of domestic wastewater or sewage must undergo similar scrutiny. The ADEQ plan review also involves an inspection by ADEQ of the site where the facility or activity is to be located to ensure its suitability.

For many practical reasons, contractors frequently modify construction projects in order to address unforeseen circumstances at the site. To ensure these modifications do not jeopardize public health or the environment, ADEQ also reviews the "as built" construction before a project may be operated or used. As built construction is evaluated by reviewing another set of plans and drawings which depict changes or modifications from the original approved plans and drawings, and an inspection of the facility as constructed.

In addition, there are a number of permits which an owner or operator may need to obtain prior to operating a facility. These permits include an aquifer protection permit (APP) which authorizes a discharge to groundwater, an national pollutant discharge elimination system (NPDES) and dredge and fill permit which authorize discharges to surface waters, and a reuse permit, which authorizes the reuse of effluent from wastewater treatment facilities.

Finally, ADEQ has an ongoing duty to ensure that drinking water and wastewater facilities are operated in compliance with all applicable standards and requirements. To fulfill this responsibility, ADEQ conducts routine visits to these facilities, many of which are located in remote parts of the state. The legislature, in A.R.S. §§ 49-104(C), 49-203(A)(7), and 49-362(A)(7) authorized ADEQ to charge inspected facilities reasonable fees for these site visits.

Historically, the demand for ADEQ's professional services has been reasonable. In the past, ADEQ, has been able to provide sufficient resources to undertake construction plan reviews, issuance of permits and compliance inspections for water programs. However, the state-wide demand for these services, particularly wastewater services, has exploded in recent years. ADEQ's budget can no longer match the ever-increasing requests for services. Moreover, both ADEQ and the Legislature have recognized for some time that the direct benefits of ADEQ's activities primarily accrue to individuals who own or operate drinking water and wastewater facilities.

Consequently, the state is moving to a fee-for-services approach to augment ADEQ's general fund budget established each year by the Legislature. Basically, the concept requires that those who benefit most from ADEQ's professional services, and who desire timely action on the part of ADEQ, should pay the actual cost of providing those services.

Sections R18-14-102 and R18-14-202 list the ADEQ services for which fees will be charged. A separate fee will be charged for approvals to construct, approvals of construction, construction approval extensions, aquifer protection permits, reuse permits, national pollutant discharge elimination system (NPDES) permits, dredge and fill permits, determinations of applicability, water quality certifications, dry well registrations, significant industrial user registrations, and compliance inspections.

The public is specifically invited to comment on the scope of these lists. Comments should address the need to charge fees for these services as well as other ADEQ activities which should be fee-based.

2. Hourly Rates
Fees for ADEQ professional water and wastewater services are proposed to be charged at an hourly rate. ADEQ proposes that the hourly rate used by the drinking water and wastewater programs be $49.00 per hour, based on results from the study by Arthur Andersen and Company. The public is invited to comment on the use of an hourly rate. Comments may also propose and justify an alternative hourly rate.

Note that the fees for processing dry well registrations, significant industrial user registrations, and approving water quality certifications for nationwide dredge and fill permits are flat fees and are not calculated on an hourly rate. In the case of dry well registrations, the $10 fee is established by statute at A.R.S. § 49-332(A). Similarly, the $250 significant industrial user registration fee is established by A.R.S. § 49-209. For nationwide dredge and fill permits, ADEQ estimates the actual costs at $200 and proposes that amount as a flat fee.

To determine the actual fee for a particular ADEQ service, the hourly fee is multiplied by the number of hours used to complete the service. The actual amount of a particular fee will depend on the amount of time needed to complete the service. The amount of time needed is directly related to complexity of the project or facility.

A flat rate, or even a matrix of fees was considered for use beyond those fees established by statute. However, ADEQ determined that these could result in fees which are too high for simple projects and insufficient for complex projects. ADEQ believes that fees based on an hourly rate will result in the most accurate calculation of actual costs for each project.

Although it proposes an hourly rate, ADEQ is aware of the need for some certainty on the part of the regulated community regarding the maximum that an ADEQ service might cost. Therefore, the maximum cost for various services is capped with a not-to-exceed dollar figure. This "not to exceed" dollar figure can be used for planning purposes.

The hourly rate is based on the actual costs incurred by ADEQ in performing a particular service. The hourly rate reflects the costs for supplies, equipment, including photocopying, compliance sampling conducted during inspections and subsequent laboratory analysis, and travel costs. The hourly rate also reflects the average ADEQ professional salary of those employees performing these functions.

The hourly rate has been calculated in the following manner. A standard work year consists of 2,088 hours. Hours were classified into non-billable administrative, non-billable programmatic and billable programmatic. Annual hourly rates were calculated based upon salary, estimated billable hours, operating and equipment costs, and section/unit and administrative allocations.

Hourly rates were calculated based on average salaries for each group of employees. Unit managers and unit administrative costs are allocated based on unit staffing ratios. Section overhead is allocated to all technical employees in the section. All overhead and administrative costs are allocated on a prorated basis between billable and non-billable.

Section overhead includes all section personnel not directly assigned to a specific unit. The costs associated with these personnel are allocated to the technical employees on a straight line basis by dividing the "total section overhead" by the number of section employees. However, the hourly rate does not reflect employee benefits or overhead. These costs will continue to be borne by the state.

Finally, ADEQ reserves the right to waive fees associated with determinations of applicability in the APP where the determination is that the APP program does not apply to the activity or facility.

3. Initial Fees
In order to ensure that ADEQ is compensated for its services and that requests for assistance are not frivolous, ADEQ proposes, in R18-14-103 and R18-14-203, that all applications for construction and permit reviews be accompanied by a reasonable initial fee.

The initial fees for the water quality protection services are set forth in 2 tables identified as Schedule A and Schedule B. Schedule A lists the initial fees to accompany permits and determinations of applicability. The permit fees are divided by type of facility because certain types of facilities are more resource intensive than others. The schedule also differentiates between a new permit and a modification to an existing permit in order to reflect the less expensive actual costs of modifications.

Note also that the proposal does not include the 40% initial fee discount currently available for multiple applications for aquifer protection permits.

Schedule B lists the initial fees for services other than permit issuance. There are no proposed initial fees for clean closure plans or compliance inspections. Fees for these services will be billed at the time that ADEQ completes its review of the closure plan, and transmits the inspection report to the owner or operator.

ADEQ expects that most projects will cost more than the initial fee. However, R18-14-203(C) allows ADEQ to establish a lower initial fee for water quality protection services where the final fee is likely to be less than seventy percent of the otherwise applicable initial fee.

After the effective date of these rules, ADEQ will not process a new construction or permitting application until the initial fee is paid in full. Applications already in house prior to the effective date will not be subject to the fees in these rules. The initial fee will be credited towards the total fee to be charged at the conclusion of the ADEQ service. In the event the actual cost is less than the initial fee, ADEQ will refund any remaining balance.

4. Maximum Fees
ADEQ is aware that a cap on the total cost for its professional services is appropriate. These maximum fees are set out in R18-14-104 and R18-14-204. As with the initial fees, we have designated maximum fees by facility type and the nature of the services being conducted by ADEQ. Note that the fees associated with aquifer protection permits are capped at levels prescribed by A.R.S. § 49-241.02. The public is invited to comment on whether the other maximum fees should be set at higher levels in order to ensure that fees cover all actual costs of ADEQ's services.

5. Fee Assessment and Collection
Once adopted, these fees will be applicable to any of the professional services cited in R18-14-102 and R18-14-202. However, inspection fees will not be assessed where the site visit occurred prior to the effective date of these rules. Similarly, other services performed prior to the effective date will not be subject to these fees with the exception of aquifer protection permits.

Up to the effective date of these rules, ADEQ will continue to charge fees for aquifer protection permits based on the existing hourly rate and maximum fees set out in R18-9-123. In addition, after the effective date of these rules, ADEQ will not begin to review a new construction plan or permit application until the initial fee is paid in full. Similarly, after completing its review, ADEQ will not issue a permit or approval (or project denial) until the fee is paid. Construction projects and permits already in progress need not submit either this initial fee, or any additional fees identified in these rules.

For billing purposes, where the actual cost of the service exceeds the initial fee, ADEQ will send a final itemized bill for the outstanding balance to the owner. Upon full payment of the bill, ADEQ will issue a permit or approval (or a project denial) on the proposed project. Similarly, once a compliance inspection is completed (i.e., after the report is transmitted to the facility owner or operator), ADEQ will prepare a bill for the inspection which shall be sent to the owner or operator. This bill shall be paid within 30 days of receipt of the bill.

All fees shall be paid by a cashier's check or money order made payable to ADEQ. Fee monies will be deposited in the Water Quality Fee Fund, or as otherwise authorized by law. ADEQ may collect unpaid bills in a similar manner to other obligations owed to it. Past due payments may be subject to an interest rate charged in accordance with ADEQ policy and state law. In addition, ADEQ shall not review or otherwise process any construction plan or permit application for any facility, site or project owned by a person who has not paid all fees in full.

Pursuant to A.R.S. § 49-112(B), counties administering the environmental and public health programs described by these rules may adopt similar fees under local law. Alternatively, counties with approved program delegations may charge fees in accordance with these rules as if ADEQ personnel were performing the professional service itself. In such cases, ADEQ will not levy a second fee for the work performed by county personnel.

6. Appeal Process
Persons wishing to dispute the amount of an actual fee may do so by petitioning the Director within 10 days after receiving the bill. The hourly rate cannot be appealed. The Director's decision constitutes final agency action for purposes of further judicial review.

5. **A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

   Not applicable.

6. **The preliminary summary of the economic, small business and consumer impact:**

   This question summarizes ADEQ's economic analysis to date on the anticipated economic impacts of today's proposed rules. This analysis is required before rules can be finalized. The purpose of the analysis is to ensure that state agencies consider the economic consequences of regulatory decisions prior to the adoption of rules.

   The impacts discussed below are based on information available to ADEQ at the time of this proposal. ADEQ will continue gathering information and refine its analysis and preliminary conclusions during the public comment period. Persons having any information relevant to these issues are asked to forward this data to ADEQ during the public comment period. ADEQ will use this information to complete a final analysis of the economic impacts which, along with the final rule, will be filed with the Secretary of State. Therefore, the final economic statement may vary from the tentative conclusions set forth below. The remainder of this statement is organized as follows:

   I. Overview of Economic Impacts

   II. Discussion of Specific Impacts

   III. Preliminary Conclusions

   I. Overview of Economic Impacts

   Historically, ADEQ has issued drinking water and wastewater construction approvals, operating permits and conducted compliance inspections using general fund monies appropriated by the Legislature. With the exception of aquifer protection permit applications received since 1992, persons owning or operating water and wastewater facilities have received ADEQ services free of charge.

   Today's proposed rules shift a substantial portion of this financial responsibility from the general state taxpayer to those individuals who directly benefit from those services. Therefore, the major cost savings of these rules are enjoyed by taxpayers, while the burdens become the responsibility of those persons owning or operating regulated drinking water and wastewater facilities.

   At present, ADEQ has a substantial backlog of water and wastewater construction reviews (over 780) and permits (over 700). The fees generated by today's proposal will allow ADEQ to hire additional staff to address these backlogs and remain current in the future. Decreased cycle times for construction reviews and permits mean that new construction will occur with significant cost savings to facility owners, utility rate payers, and the land development community.

   This resource shift also benefits taxpayers because a greater portion of the costs of approvals, certifications, permits and inspections required by environmental legislation will be borne directly by the facilities and their customers rather than by all taxpayers in the state.

   As noted above, the proposed fee levels are documented by a Workload Analysis and Rate Determination Study completed in April, 1995 by Arthur Andersen and Co. Table I presents a summary of all the costs and benefits of the rule package. Calculated benefits are based on quantitative and qualitative sample data.

   Based on the data collected, ADEQ expects that 57% of the categories listed will derive benefits which moderately or greatly exceed costs. In all other categories where cost/benefits have been calculated, there are no significant differences expected between benefits and costs.Table I indicates that this rule package is both prudent in terms of public policy, and reasonable in terms of costs and benefits.

   The proposed rule establishes an hourly rate for all water and wastewater fees (except flat fees) of $49.00. This fee, based on the results of the Arthur Anderson and Company study, reflects certain costs to the state for review and processing construction reviews, permits and inspections. In the case of aquifer protection permits, this hourly rate is an increase from $31.84 to $49.00 per hour, an increase of 54%.

   The proposed rule also increases the maximum fees to the level established by statute. In the case of aquifer protection permits, the statutory maximum is the lesser of $16,000 per permit or $25,000 per individual site. Fees are also proposed for issuing reuse permits, construction, and compliance inspections, and closure plan reviews for sites considered to be "clean." Maximum compliance inspection fees range from $3,200 to $4,000.

   The number of hours estimated to process an aquifer protection permit varies with the type of facility and type of discharge. Overall, this number ranges from 26 hours for simple permits to more than 2800 hours for very complicated permits. Approximately, 65% of existing facilities that still need aquifer protection permits are estimated to be of average complexity.

   Similarly, the number of hours estimated to process a reuse permit ranges from 32 to 248. Of the existing facilities that still need reuse permits, 85% are estimated to be of average complexity. The estimated costs for facilities of average complexity is approximately $4,000.

   ADEQ intends to streamline its aquifer protection permit process for domestic wastewater treatment facilities that discharge less than 5 million gallons per day, if that the wastewater effluent can meet water quality and aquifer quality standards at the "end of pipe." This reform will decrease permit processing time and result in lower fees.

In addition, ADEQ is developing new BADCT technical guidance documents for mining facilities, surface impoundments and oil/water separators. ADEQ has also streamlined the process for dry well reviews and permitting. Because of the ongoing process improvement efforts, ADEQ anticipates that hourly rate increases will be offset by decreases in permit processing time, resulting in an overall reduction of costs.

Decreases in initial fees from current rates for new permits are projected to range from 23% to 63%. This reduction in initial "out-of-pocket" costs will allow facilities to utilize the savings for other activities. The facility will eventually pay for all processing costs up to the maximum, but the lower initial fees should result in improved cash flow and savings for the facility.

Finally, since a fee is involved, the applications submitted to ADEQ should be of high quality and represent projects and facilities which are imminent, rather than speculative and inadequately planned. Better quality submissions will reduce the amount of time for ADEQ review (and thereby reduce the fee charged for the service), and ultimately reduce the cycle time for ADEQ approvals and permits.

II. Discussion of Specific Impacts

A. **Benefits and Costs to State Agencies**

BENEFITS: If today's proposal is adopted, ADEQ will receive a substantial portion of its drinking water and wastewater operating expenses from the revenues generated by the fees. For example, in fiscal year 1997, the Water Quality Division will be authorized to spend in excess of $6,000,000 from the Water Quality Fee Fund. Actual expenditures will be limited to actual fees collected by ADEQ. This authorization assumes the fee rules are in place. However, we note that aquifer protection program fees are already in place and will generate approximately $1,500,000 regardless of the disposition of today's proposal.

The new fees are expected to generate as much as $4 million in revenue. By program, ADEQ estimates that up to $264,600 could be raised for the drinking water program, $1 million for the wastewater construction and inspection programs, and $2,790,000 for the aquifer protection permits program.

COSTS: This money will be used for new FTE salaries, travel, equipment and supplies to process construction reviews, issue permits and conduct inspections. The remaining amount needed to support drinking water and wastewater programs will continue to be provided through the state general fund budget process and federal grant funding.

Specifically, the fee revenues will support 8 new FTEs in the wastewater programs and 33 new FTEs in the aquifer protection permits program. It should be noted that these staff increases are significantly less than the numbers calculated as necessary by the Arthur Anderson study.

Other state agencies are unaffected by the proposed fees since they are, by law, exempt from the fees.

B. **Benefits and Costs to Political Subdivisions**

There are 243 municipalities and other political subdivisions potentially affected by the drinking water fees and over 600 affected by the wastewater fees. In addition, municipalities and political subdivisions are owners and operators of facilities for which they must obtain Aquifer Protection Permits. These political subdivisions are the owners and operators of facilities for which fees may be charged. The amount of fees a political subdivision can expect to pay is directly related to the number of applications filed each year and the complexity of each application. The number and scope of ADEQ's compliance inspections will also contribute to the fees paid by political subdivisions.

BENEFITS: The principal benefit to political subdivisions is derived from savings attributable to reduced cycle times needed in obtaining drinking water program construction approvals, wastewater collection and treatment systems construction approvals, surface water permits, and aquifer protection permits. Cycle-time reductions are beneficial since they result in earlier opportunities for facilities to generate income and reduce their financing costs.

COSTS: The proposed fees establish a new cost for obtaining construction approvals for wastewater treatment and collection system construction and expansion, approvals for drinking water system construction and expansion, obtaining a surface water permit, obtaining a water quality certification and a modified cost for obtaining an aquifer protection permit. The rules also impose fees for compliance inspections for all regulated facilities.

ADEQ anticipates that the average wastewater fees charged to political subdivisions will be as follows: $633 for inspections, $700 for Water Quality Certifications, $633 for compliance inspections and, $1,500 for construction plan approvals.

These fee costs can be minimized if applicants participate in pre-submittal consultations with ADEQ staff and ensure that applications are as complete and accurate as possible.

These new costs should also be outweighed by the benefits of reduced cycle time. For example, if a political subdivision submits a construction application to build a 600,000 gallon per day wastewater treatment plant, costing $1,100,000 dollars, the current average wait time for ADEQ approval is 90 days.

The opportunity costs typically incurred during this delay include: 1) $200 per day of financing costs; 2) $200 per day to keep an existing (undersized) treatment plant operating; 3) $25,000 per day liability because the discharge from the old plant causes or contributes to violations of water quality standards; and 4) lost surcharge and tax revenue from residen-

tial and commercial customers which will not receive drinking water and wastewater services until ADEQ approvals and permits are obtained.

If adopted, the fees charged to this community for the review will be approximately $8,100. The cost of financing for this typical 90-day cycle time exceeds $18,000. If the wait time in this example could be reduced to 30 days due to additional staffing, the financial liability for the political subdivision would be reduced to $6,000, thereby saving the community $3,900 in financing costs alone.

Note that there are no additional costs for dry well registrations and pretreatment permit registrations as these charges are established in statute and are unchanged by this rule.

C. **Benefits and Costs to the Private Sector**

Private-sector businesses constitute more than three-quarters (1,351 or 77.8%) of all drinking water facilities and constitute the majority of all wastewater facilities. Wastewater facilities include those which have to get aquifer protection permits. Furthermore, the vast majority (93.7%) of these regulated private sector entities are "small businesses" to the extent that they employ fewer than 100 employees.

ADEQ does not consider it feasible to exempt small businesses from its fees, or even portions of its fees, since these should be considered part of the normal costs of doing business.

Since private-sector drinking water and wastewater facilities are operated "for-profit," their costs, including fees, will be passed on to their customers. In the case of drinking water and wastewater facilities, costs will likely be borne by the residents and commercial enterprises they serve.

As with political subdivisions, the cost to the private sector again depends on the number and quality of requests for ADEQ services needed by the private company. For example, in 1995, 1 private company submitted 56 applications to ADEQ. Of these, 50 (89%) were simple cases; the remaining 6 were of average complexity. Average complexity submittals are estimated to cost $1,264. Therefore, if the proposed fee system had been in place, the company would have paid an average of $245 for each of its requests, and approximately $13,709 in total fees.

Another company had 15 applications in 1995, 13 of which were simple cases and the remainder, average. Therefore, its fees would be $4,121.

BENEFITS: Today's proposed rule will benefit the private sector in a manner similar to the benefits accruing to political subdivisions and described above. Benefits are the decreased cycle time and the resulting decrease in opportunity costs.

For example, the wait time for a construction review of a private 2.1 million gallon per day wastewater treatment plant, costing in excess of $5,100,000 dollars, is currently 83 days. The project is considered to be complex, therefore the fees for the review will be approximately $8,800. The opportunity cost for financing alone during the wait time is $2,600 per day.

If the wait time in this example could be reduced to 30 days, the private entity would avoid financial liabilities of $137,800 dollars. The cost avoided exceeds the fee cost by a factor of 14. Benefit estimates of this type are situation-specific, but they apply to every type of service so long as the additional fee income results in decreased cycle times.

Since mining activity fluctuates with the market demand for mined materials, it is important for mines to begin operations as soon as possible. Therefore, the mining industry will derive a considerable benefit from decreases in ADEQ cycle time due to increased fees and the resulting ADEQ personnel. Small operations such as gold mines may only have a window of opportunity for 5 to 6 years. ADEQ's cycle time for 401 certification and aquifer protection permit issuance have a significant impact on the profitability of these facilities.

For example, ADEQ estimates that a mine which obtains its permit and commences work in 6 months rather than 1 year, might save $2.25 million in lost income from the sale of the mined material, finance charges on loans, facility maintenance costs, and permit related costs such as consulting fees.

In another example, a mine which waited 3 years for a permit could have avoided over $2.5 million in real and opportunity costs if it had obtained its permit in eighteen months. Although these savings will differ for individual facilities, they generally apply to all time-sensitive mining operations.

Benefits to small businesses are expected to be similar to larger private entities. For example, a small business recreational vehicle park of 18 lots which submits an application to construct a 3,000 gallon per-day septic tank and sewage collection system, costing $15,000 dollars, has a current wait time of 95 days. These projects are considered relatively simple, therefore, the fees for the review will be approximately $800. The opportunity costs during this wait time are $5.00 per day in lost rents for each of 18 spaces (a total of $90 dollars per day) which could not be leased until the wastewater treatment plant is built and operational.

If the wait time could be reduced to 30 days, the cost to the developer would be reduced by $5,840, or more than 7 times the cost of the ADEQ review.

ADEQ estimates that obtaining an aquifer protection permit in 6 months rather than a year could result in savings from $5,000 to $50,000 for facilities treating and disposing of domestic wastewater. Similarly, ADEQ estimates that obtaining an aquifer protection permit in 14 months rather than 28 months could result in savings of approximately $300,000

for commercial facilities operating a surface impoundment to treat its process wastewater.

COSTS: The average anticipated fees are $633 for compliance inspections, $700 for water quality certifications, $1,500 for construction reviews and, once the ADEQ is approved to issue NPDES permits, the average fee for an NPDES permit is expected to be $1,500.

Since construction projects and existing drinking water and wastewater facilities owned and operated by small businesses tend to be smaller and simpler than larger private sector entities, the fees paid are expected to be commensurately lower for small businesses. For small businesses, the average anticipated costs are $333 for compliance inspections, $400 for water quality certifications, and $1,250 for construction approvals.

For a private homeowner, the average wait time for construction approval for a 500 gallon per day, home aerobic wastewater treatment and disposal system, costing $10,500 dollars, is 60 days. These projects are considered to be simple, therefore the fees for the review would be approximately $900 dollars.

Property owner costs during the wait time include: 1) the additional cost of construction financing beyond the 30-day period in state law, and 2) the cost of a new loan application if a loan window "closes." Financing costs of $5.00 per day for a $250,000 loan are estimated at $1,650. The cost of a new loan application is estimated at $1,350 covering a new appraisal, credit check, and title search.

The excess wait time in this example creates $3,000 dollars in costs for the prospective homeowner. This amount is more than 3 times the cost of the proposed fees for the project.

Finally, there are an estimated 3,500 alternative on-site systems regulated facilities in this category. Average costs include $333 for compliance inspections and $600 for construction reviews.

D. **Benefits and Costs to the Rate Payers/Consumers**

Rate payers, as beneficiaries of the drinking water and wastewater services performed by the public and private purveyors, will ultimately pay for the costs of the proposed fees.

BENEFITS: The benefits to rate payers are similar to political subdivisions in that reduced cycle time and opportunity costs should actually make drinking water and wastewater projects and permits more affordable in the future despite the fees charged by ADEQ. A portion of this savings will translate into lower lot and new housing costs.

COSTS: The expenses which a drinking water or wastewater purveyor can charge its customers is established by local law (in the case of political subdivisions) and the Arizona Corporation Commission (in the case of private purveyors). To the extent allowed, ADEQ expects purveyors to include the full amount of fees in their rate base and in their surcharge rates. The actual cost of these fees on a "per person" or "per household" basis will depend on the size of the population being served by the purveyor. For example, a $4,000 fee spread across 10,000 households would be $0.04 per household. The same fee divided among 100 households will be $40 dollars per household.

E. **Benefits and Costs to the Taxpayers and the General Public**

As noted above, the state taxpayer has historically subsidized ADEQ activities to review construction plans, issue permits and inspect water and wastewater facilities. The principal effect of today's proposal is to shift a significant amount of this burden away from the taxpayers and toward those persons directly benefiting from the ADEQ activities.

BENEFITS: Increases in ADEQ fees will result in a proportional reduction in the percentage of support provided for these services from the general fund. While sound public policy requires some general fund support for public health and environmental protection within the state, recent trends both in Arizona and nationally have been to fee-based or cost-of-service systems. These systems allocate the cost of regulation to the regulated community.

COSTS: State taxpayers will continue to support ADEQ's drinking water and wastewater programs. The Arthur Andersen & Co. fee study documents that the proposed fees will still be insufficient to capture all the costs of drinking water and wastewater regulation.

Once the fees are adopted, the taxpayer share paid from the general fund will be approximately 40 percent of the current cost for the drinking water and wastewater programs. This amount will continue to fund technical assistance, data management, and enforcement activities. In addition, taxpayers will continue to subsidize construction reviews, permit issuance and inspections for facilities owned or operated by state agencies since they are exempt from the payment of fees.

III. Preliminary Conclusions

For all of the above reasons, including the analysis of anticipated costs and benefits, ADEQ has tentatively concluded that the effect of today's rules will be that the benefits outweigh the costs in accordance with A.R.S. § 41-1052(C)(3). This preliminary conclusion will be re-evaluated during the public comment period.

7. **The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**

Name: Margaret L. McClelland or Martha L. Seaman

Address: Department of Environmental Quality
3033 North Central Avenue
Phoenix, Arizona 85012-2809

Telephone: (602) 207-2222

Fax: (602) 207-2251

8. **The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:**

Persons interested in submitting written comments on the proposed rulemaking should postmark or fax them to the person identified above no later than 5 p.m. on Tuesday, April 2, 1996.

In accordance with A.R.S. § 41-1023, ADEQ has scheduled a series of public workshops and hearings to discuss the proposed rules and to receive verbal and written comments on suggestions for improvement. These meetings are scheduled for the following dates, times and locations:

Date: March 25, 1996

Time: 10 a.m.

Location: Department of Environmental Quality
Public Meeting Room
3033 North Central Avenue
Phoenix, Arizona 85012-2809

Date: March 26, 1996

Time: 10 a.m.

Location: Flagstaff City Hall
Flagstaff City Council Chambers
211 West Aspen
Flagstaff, Arizona

Date: March 27, 1996

Time: 9 a.m.

Location: Mayor and City Council Chambers
255 West Alameda
Tucson, Arizona

ADEQ is committed to complying with the Americans With Disabilities Act. If any individual with a disability needs any type of accommodation, please contact ADEQ at least 72 hours before the hearing. Persons interested in making verbal comments, submitting written comments or obtaining more information about these proposed rules may do so at these meetings. ADEQ will respond to all significant comments in the preamble accompanying the final rules.

9. **Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**

Not applicable.

10. **Incorporations by reference and their location in the rules:**

None.

11. **The full text of the rules follows:**

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 14. DEPARTMENT OF ENVIRONMENTAL QUALITY PERMIT AND COMPLIANCE FEES

ARTICLE 1. DRINKING WATER PROGRAM SERVICE FEES

Section

ARTICLE 2. WATER QUALITY PROTECTION FEES

Section
R18-14-201. Definitions
R18-14-202. Fee Services
R18-14-203. Hourly Rates and Initial Fees
R18-14-204. Maximum Fees
R18-14-205. Fee Assessment and Collection
R18-14-206. Appeal Process

ARTICLE 1. DRINKING WATER PROGRAM SERVICE FEES

R18-14-101. Definitions
In addition to the definitions prescribed in A.R.S. §§ 49-101 and 49-201, the terms of this Article shall have the following meanings:

1. "ADEQ" means the Department of Environmental Quality.
2. "Approved" or "approval" means written approval from ADEQ.
3. "Director" means the Director of the Department of Environmental Quality, or his designee.
4. "Drinking water plan documents" means design proposals, modifications, line extensions, preliminary plans, survey data, topographic data, engineering design reports or other basis of design data, general and detailed construction plans and specifications, profiles, plat maps, applications, time extensions, treatment methods and devices (including devices for sale in the state of Arizona) and other information pertaining to the design of the project.
6. "Owner" means a person with a vested interest in real or personal property, or an authorized representative or agent.
7. "Person" means an individual, employee, officer, managing body, trust, firm, joint stock company, consortium, public or private corporation, including a government corporation, partnership, association, counties, towns, cities, other political subdivisions of the state, the United States government, or a federal facility, interstate body, or other entity.
9. "Related costs" means supplies, equipment, analysis, photocopying, transportation costs, and per diem.
10. "Time extensions" means an extension of the expiration date for an existing construction approval issued by ADEQ.

R18-14-102. Fee Services
ADEQ shall assess and collect fees for the following drinking water services:

1. Review and approval of drinking water plan documents, including time extensions, and any site visits necessary to issue or deny an approval;
2. Compliance inspection at a regulated facility.

R18-14-103. Hourly Rates and Initial Fees

A. The fees for the services described in R18-14-102, shall be calculated using an hourly rate of $49.00.
B. The initial fee for the review of a drinking water plan document shall be $100.
C. The initial fee for a time extension of a drinking water plan review shall be $100.

R18-14-104. Maximum Fees
The maximum fee charged for drinking water services shall not exceed the following amounts:

1. $9,850 for the review of a single drinking water plan document;
2. $1,970 for a time extension for existing construction approvals issued by ADEQ;
3. $3,200 for a compliance inspection.

R18-14-105. Fee Assessment and Collection

A. In the case of a compliance inspection, the fee shall be paid within 30 days of receiving a bill from ADEQ. The bill shall reference the date the final inspection report was transmitted to the owner or operator of the inspected facility.
B. At the time of submission of drinking water plan documents or extensions for review and approval, an owner shall submit and initial fee of $100 dollars.
C. ADEQ shall not process any drinking water plan document until the initial fee is paid in full.
D. After completion of its review of the drinking water plan documents, but prior to issuance or denial of any approval requested, ADEQ shall prepare a final itemized bill.
   1. If the actual cost of services exceeds the initial fee, ADEQ shall bill the owner for the actual cost of the services up to the maximum allowed under R18-14-104.
   2. ADEQ shall not review or process any subsequent drinking water plan, or provide any other water quality protection service other than a compliance inspection, for an owner until all outstanding billed fees are paid in full.
E. All service fees shall be paid by certified check or money order which is made payable to ADEQ.

R18-14-106. Appeal Process

A. An owner who wishes to appeal the number of hours on and cost of a final bill shall file a written request for reconsideration with the Director. The request shall specify, in detail, the matter or matters in dispute and any documentation that an error has been made. The written request for reconsideration shall be submitted to ADEQ within 10 working days of the date of receipt of the final bill.
B. The Director shall make a final decision as to whether the number of hours and costs billed are correct. A final written decision shall be mailed to the owner within 10 working days after the date of receipt by the Director of the written request for reconsideration. All final decisions of the Director are subject to appeal pursuant to A.R.S. § 12-901 et seq.

ARTICLE 2. WATER QUALITY PROTECTION FEES

R18-14-201. Definitions
In addition to the definitions prescribed in A.R.S. §§ 49-101, 49-201, 49-241.02, 49-331, and 49-362, the terms of this Article shall have the following meanings:

1. "ADEQ" means the Department of Environmental Quality.
2. "Approved" or "approval" means written approval from ADEQ.
3. "Aquifer Protection Permit" means an individual or general permit issued pursuant to A.R.S. §§ 49-203 and 49-241 through 251, and A.A.C. Article 9. For purposes of this Article, aquifer protection permits include denied permit applications.
4. "Clean Water Act" means the Federal Clean Water Act, previously known as the Federal Water Pollution Control Act, 33 U.S.C. 1251 et seq., as amended.
5. "Dredge and fill permit" means a permit issued by the United States Army Corps of Engineers for discharge of pollutants for the purposes of filling or dredging a waters of the United States, including wetlands, as required by 33 U.S.C. 1344 (404) of the Clean Water Act. For purposes of this Article, dredge and fill permits include denied permit applications.

6. "Dry Well" has the meaning ascribed to it in A.R.S. § 49-331(3).
7. "Fiscal year" means the 12-month period which begins on July 1 and is dated for the next calendar year and ends on the following June 30.
8. "gpd" means gallons per day.
9. "Major modification" means a revision to an issued aquifer protection permit under A.R.S. § 49-201.18.
10. "NPDES permit" means a National Pollutant Discharge Elimination System permit issued by the United States Environmental Protection Agency for a point source discharge of pollutants into waters of the United States, as required by 33 U.S.C. 1342 (402) of the Clean Water Act. For purposes of this Article, an NPDES permit includes a denied permit application.
11. "On-site wastewater treatment plant" means all of the processes, devices, structures, and earthworks used for treating wastewater for disposal and reuse except septic tanks with a hydraulic capacity of less than 2,000 gallons per day and which possesses an N.S.F. Class I rating.
12. "Other modifications" means a revision to an issued aquifer protection permit that is not a major modification, and includes a minor modification as defined in R18-9-121(D).
13. "Owner" means a person with a vested interest in real or personal property, or an authorized representative or agent.
14. "Permitted facility" means any facility holding a valid aquifer protection permit, reuse permit, NPDES permit, or dredge and fill permit.
15. "Person" means an individual, employee, officer, managing body, trust, firm, joint stock company, consortium, public or private corporation, including a government corporation, partnership, association, counties, towns, cities, other political subdivisions of the state, the United States government, or a federal facility, interstate body or other entity.
16. "Plan documents" means reports, proposals, preliminary plans, survey and basis of design data, general and detail construction plans, profiles, specifications, time extensions and all other information pertaining to the project.
17. "Related costs" means supplies, equipment, analysis, photocopying, transportation costs, and per diem.
18. "Reuse permit" means a permit issued for wastewater effluent reuse by ADEQ pursuant to R18-9-702(C). For purposes of this Article, reuse permits include denied permit applications.
19. "Significant Industrial Users" means the same as 40 CFR 403.3(t).
20. "Time extensions" means an extension of the expiration date for an existing construction approval issued by ADEQ.
21. "U.S. EPA" means the United States Environmental Protection Agency.
22. "Wastewater treatment facility" means all of the processes, devices, structures, and earth-works which are used for treating wastewater for disposal and reuse, but does not include septic tanks, or wastewater treatment plants serving single family residences, industrial unit processes, or industrial impoundments for process waters within the industrial property.

R18-14-202. Fee Services

A. ADEQ shall assess and collect fees for the following services:
   1. Groundwater Protection Services:
      a. Processing a request for a determination of applicability;
      b. Drafting, issuing, transferring or denying an aquifer protection or reuse permit;
      c. Inspecting or sampling a permitted facility, a facility with a pending permit application or an unpermitted facility for which a complete permit application has not been received at the time of the inspection;
      d. Registering a dry well.
   2. Surface Water Protection Services:
      a. Review, approval or disapproval of wastewater treatment facility plan documents, including "Approvals to Construct", "Approvals of Construction" time extensions, and any site visit necessary to issue these approvals or extensions;
      b. Certifying a draft NPDES permit prepared by U.S. EPA, or a draft Dredge and Fill permit prepared by the U.S. Army Corps of Engineers pursuant to section 401 of the Clean Water Act;
      c. Drafting and/or issuing an NPDES or Dredge and Fill Permit;
      d. Registering significant industrial users permitted to discharge into community sewage systems;
      e. Inspecting or sampling a permitted facility, a facility with a pending permit application and an unpermitted facility for which a complete permit application has not been received at the time of the inspection.

R18-14-203. Hourly Rates and Initial Fees

A. The fee for any service described in section R18-14-202 shall be calculated using an hourly rate of $49.00, except:
   1. The fee for processing a dry well registration shall be $10.00 per dry well.
   2. The fee for processing a significant industrial user registration shall be $250.00 per year.
   3. The fee for providing water quality certification of a nationwide dredge and fill permit shall be $200.00.

B. At the time of submission to ADEQ for review and approval, the owner shall pay an initial fee as set out in Schedules A and B.

C. Upon request, ADEQ may set an alternative, lower initial fee on a case-by-case basis, where it is likely that the final fee will not exceed at least 70% of the otherwise applicable initial fee.

Schedule A

INITIAL FEES FOR ADEQ WATER QUALITY PROTECTION PERMITS

ADEQ Service	New Permit [1]	Major Modification	Other Modification
Wastewater Treatment Plants			
Lined Surface Impoundments	$1,800	$1,000	$100
Discharge to Surface Waters	$1,800	$1,000	$100
Subsurface Discharge	$2,400	$1,200	$100
Design Less than 20,000 gpd	$1,200	$600	$100
Industrial Facilities			
Lined Surface Impoundments	$4,500	$2,200	$300
Discharge to Surface Waters	$4,500	$2,200	$300
Subsurface Discharge	$4,500	$2,200	$300
Mine Facilities			
Tailing Piles or Ponds	$6,000	$3,000	$400
Base Metal Leaching Operations	$6,000	$3,000	$400
Discharge to Surface Waters	$4,500	$2,200	$300
Precious Metal Processing	$4,800	$2,400	$400
In-Site Leaching	$6,000	$3,000	$400
Other	$4,000	$2,000	$400
Other Discharging Facility	$4,000	$2,000	$300
Reuse Permit	$1,400		$100

Schedule B

Initial Fees for Water Quality Protection Services Other than Permits

ADEQ SERVICE	INITIAL FEE
APP Applicability Determination Reviews	$0
Clean Closure Plans	$0
On-site Disposal System Construction Plan Reviews (less than 2000 gpd)	$100
Domestic Wastewater System Construction Plan Reviews (greater than or equal to 2,000 gpd, but less than 20,000 gpd)	$500
Domestic Wastewater System Construction Plan Reviews (greater than or equal to 20,000 gpd)	$1000
Water Quality Certifications For	
Individual Dredge and Fill Permits	$600

1.Permit includes individual aquifer protection permits and reuse permits.

Schedule B
Initial Fees for Water Quality Protection Services Other than Permits

ADEQ SERVICE	INITIAL FEE
Water Quality Certifications for NPDES Permits	$600
Water Quality Certifications for Other Federal Permits	$200

D. Applicants shall remit a separate initial fee for each individual permit application submitted to ADEQ.

R18-14-204. Maximum Fees
ADEQ shall not assess more than the maximum fee for each of the services set out in Schedules C and D.

Schedule C

Maximum Water Quality Protection Permit Fees

ADEQ Service	New Permit [2,3,4]	Major Permit	Other Permit	Compliance Inspection
Wastewater Treatment Plants				
Lined Surface Impoundments	$16,000	$10,600	$1,500	$3,200
Discharge to Surface Waters	$16,000	$10,600	$1,500	$3,200
Subsurface Discharge	$16,000	$15,300	$2,300	$3,200
Design Less than 20,000 gpd	$16,000	$8,000	$1,100	$3,200
Industrial Facilities				
Lined Surface Impoundments	$16,000	$16,000	$2,900	$3,200
Discharge to Surface Waters	$16,000	$16,000	$4,000	$3,200
Subsurface Discharge	$16,000	$16,000	$4,000	$3,200
Mine Facilities				
Tailing Piles or Ponds	$16,000	$16,000	$10,000	$4,000
Base Metal Leaching Operations	$16,000	$16,000	$10,000	$4,000
Precious Metal Processing	$16,000	$16,000	$7,200	$4,000
Discharge to Surface Waters	$16,000	$16,000	$8,200	$4,000
In-Situ Leaching	$16,000	$16,000	$8,200	$4,000
Other	$16,000	$16,000	$5,900	$4,000
Other Discharging Facilities	$16,000	$16,000	$4,300	$4,000
Reuse Permit	$16,000	-	$2,300	$3,200

Schedule D

Maximum Fees for Water Quality Protection Services **Other than Permits**

ADEQ Service	Construction Approval	Construction Inspection	Compliance Inspection
Clean Closure Plans	$3,000	-	-
On-Site Disposal System Construction Plan Reviews (less than 2000 gpd)	$700	$700	$400
Domestic Wastewater System Construction Plan Reviews (greater than or equal to 2,000 gpd,			

but less than 20,000 gpd)	$4,500	$4,500	$1,000
Domestic Wastewater System Construction Plan Reviews (greater than or equal to 20,000 gpd)	$10,000	$2,500	$3,200
Water Quality Certifications for Individual Dredge and Fill Permits	$3,040	-	$1,200
Water Quality Certifications of NPDES Permits	$5,740		-$3,200
Water Quality Certifications of Other Federal Permits	$5,740	-	$3,200

R18-14-205. Fee Assessment and Collection

A. In the case of a compliance inspection, fees shall be paid within 30 days of receipt of a final itemized bill from ADEQ, which shall accompany the final inspection report.

B. At the time of submittal by an owner for a construction review and approval, a construction inspection, the certification of a draft Federal Clean Water Act permit, an aquifer protection permit applicability determination, or an aquifer protection permit, the owner shall submit the initial fee set out in Schedule A or B in R18-14-203 to ADEQ.

C. ADEQ shall not process a permit or construction review until the initial fee is paid in full.

D. ADEQ shall prepare a final itemized bill after completing the final permit certification, construction review, facility plan document review and approval, or aquifer protection permit determination, but prior to issuance or denial.

1. If the actual cost of services exceeds the initial fee, ADEQ shall bill the owner for the actual cost of the services up to the maximum allowed under R18-14-204.
2. If an owner fails to pay the applicable service fees, ADEQ shall not provide any further water quality protection or drinking water service, other than a compliance inspection, for that owner until such time as the balance is paid in full.

E. All fees for services shall be paid by certified check or money order made payable to ADEQ.

R18-14-206. Appeal Process

A. An owner who wishes to appeal the number of hours on and cost of a final bill shall file a written request for reconsideration with the Director. The request shall specify, in detail, the matter or matters in dispute and any documentation that an error has been made. The written request for reconsideration shall be submitted to ADEQ within 10 working days of the date of receipt of the final bill.

B. The Director shall make a final decision as to whether the number of hours and costs billed are correct. A final written decision shall be mailed to the owner within 10 working days after the date of receipt by the Director of the written request for reconsideration. All final decisions of the Director are subject to appeal pursuant to A.R.S. § 12-901 et seq.

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2 Permit includes individual aquifer protection permits and reuse permits.

3 Where more than 1 APP permit is needed for activities at a contiguous, individual site, the total fee for these multiple permits shall not exceed $25,000, per A.R.S. § 49-241.02.

4 Where an applicability review determines that an APP is needed, the fee for the applicability determination will be added to the total permit fee.

TABLE 1. CALCULATED COST/BENEFIT SUMMARY TABLE FOR WATER QUALITY FEE RULES

FACILITY TYPE	STATE AGENCIES	POLITICAL SUBDIVISIONS	PRIVATE UTILITIES	COMMERCIAL\ INDUSTRIAL	SMALL BUSINESS	RATE PAYERS	GENERAL PUBLIC
Aquifer Protection Permits	=	G	G	G	G	M	M
Compliance Inspection	=	=	=	=	=	=	M
Drinking Water Plan Reviews & Construction Inspections	=	G	G	G	G	M	M
Compliance Inspections	=	=	=	=	=	=	M
Surface Water Plan Reviews & Construction Inspection	=	G	G	G	G	M	M
Compliance Inspections	=	=	=	=	=	=	M
Water Quality Certifications	=	G	G	G	G	M	M
NPDES Permits	=	M	M	M	=	M	M
Dry Well Registration *	-	-	-	-	-	-	-
Pretreatment Permit Reg. *	-	-	-	-	-	-	-

KEY TO TABLE

* COSTS SET IN STATUTE. COSTS AND BENEFITS NOT CALCULATED

= NO SIGNIFICANT DIFFERENCE BETWEEN BENEFITS AND COSTS

G BENEFITS GREATLY EXCEED COSTS

M BENEFITS MODERATELY EXCEED COSTS

\- NO COSTS OR BENEFIT ESTIMATES ARE AVAILABLE.